IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos. 569 to 572 of 2007

Mr.M.K.Anand ... Appellant in All Criminal Appeals

Vs

R.Radhakrishnan ... Respondent in Crl.A.No.569/2007

K.Rajaram ... Respondent in Crl.A.No.570/2007

Arul Jothi ... Respondent in Crl.A.No.571/2007

Dakshin Speaker Manufacturing
Private Limited
B-4 Phase, MEPZ,
Tambaram, Chennai 600 045. .. Respondent in Crl.A.No.572/2007

Prayer in Crl.A.No.569 of 2007 : Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records in Criminal Appeal No.130 of 2006 on the file of the Learned First Additional Sessions Judge and set aside the Judgment of acquittal against the Judgment of Conviction and Sentence passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.2938 of 2002.

Prayer in Crl.A.No.570 of 2007 : Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records in Criminal Appeal No.132 of 2006 on the file of the learned First Additional Sessions Judge and set aside the Judgment of acquittal against the Judgment of Conviction and Sentence passed by the learned XXIII Metropolitan Magistrate at Saidapet, Chennai, in C.C.No.2938 of 2002.

Prayer in Crl.A.No.571 of 2007 : Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records in Criminal Appeal No.131 of 2006 on the file of the learned First Additional Sessions Judge and set aside the Judgment of acquittal against the Judgment of Conviction and Sentence passed by the learned XXIII Metropolitan Magistrate at Saidapet, Chennai, in C.C.No.2938 of 2002.

Prayer in Crl.A.No.572 of 2007 : Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records in Criminal Appeal No.129 of 2006 on the file of the learned First

Additional Sessions Judge and set aside the Judgment of acquittal against the Judgment of Conviction and Sentence passed by the learned XXIII Metropolitan Magistrate at Saidapet, Chennai, in C.C.No.2938 of 2002.

For Appellant (in all Crl.As') : Mr.A.Ramkumar for M/s.Surana & Surana

For Respondents (in all Crl.As') : M/s.Muthumani Doraisami Senior Counsel

C O M M O N J U D G M E N T

All these four appeals have been filed against the order of acquittal. The appellant is the complainant in the private complaints filed for the offence punishable under Section 500 r/w Section 34 of the IPC. The above complaint has been filed on the ground that the complainant was working as General Manager(Finance) in the first respondent/1st accused company from 15.01.2001 to 26.12.2001. The second accused is Managing Director, the third accused is the Director and fourth accused is the General Manager of the first accused company respectively.

2.1. According to the complainant, the first accused company owned by one M/s Onkyo Limited (Japan) having of 99.07% shares and one Radhakrishnan/the second accused herein and one Arul Jyothi/the third accused herein holding 0.03% shares. Even though the first accused, namely, M/s.Onkyo Limited(Japan), have not appointed any directors to the Board of the 1st accused and the 1st accused company was being managed 2nd accused. The complainant being a General Manager (Finance), he had a occasion to scrutinize the financial activities of the 1st accused company and during the scrutiny he found some malpractice had been committed by the 2nd and 3rd accused, and they have illegally siphoned away huge funds from the first accused company against the interest of the majority shareholder. In the above circumstances, the complainant has informed the majority shareholder regarding the malpractice and mismanagement. Then, the majority shareholder withdraw their entire stakes in the first accused company in January,2002 and thereafter, the 2nd and 3rd accused become the absolute owners of the first accused company.

2.2. On 26.12.2001, when the complainant went to attend his office, the 2nd and 3rd accused instructed the security staff at the gate not to permit the complainant inside the premises of the company. Thus, from 26.12.2001, the complainant was forced to remain absent from his regular duties. Thereafter, the appellant has started his own company by name M/s.Nippon Speaker Private Limited. The said company is only engaged in trading activities, i.e., selling the speaker manufactured by other companies and earn some profit in the said process. The first accused is engaged in manufacturing speakers for various original equipment manufactures. The first accused unable to bear the independent attitude and self sustaining activity of the Appellant without taking any help from the first accused, started behaving in a more hostile manner. As a result of such hostility, with an intention to defame the complainant issued a public notice in the name of a non existent designation of Assistant General Manager, Dakshim speaker manufacturing private limited, Chennai 45, in the English Daily "The Hindu" dated 02.03.2002. The said notice reads as follows:-

PUBLIC NOTICE

> Mr.K.Anand B.com, FCA General Manager-Finance, acted against the interest of four company, the same is detrimental to our concern. The said acts of his tantamounts to breach of trust and understanding.
>
> We hereby issue this general notice that no person including the employees of our company should have any dealings with the said person. Hereafter the company is not responsible for all his commissions and omissions.
>
> Assistant General Manager,Dakshin Speaker Manufacturing Private Limited,(Formerly Onkyo India Private Limited)Chennai-600 045.

2.3. The defamatory Public notice has caused immense mental agony and deterioration in health to his aged parents and it also caused untold misery and irreparable damage and loss to the reputation, business and social interest of the complainant. The complainant's friends also started suspecting the bonafieds of the complainant and some of them have even stopped talking to this complainant. Therefore, the complainant issued legal notice dated 04.03.2002 calling upon to the accused to give explanation as to why they have caused the public notice and asking the accused tender apology for the above said notice. For which, the respondents /accused sent a reply notice making baseless allegation against the complainant. In the above circumstances, the appellant filed the private complainant before the Magistrate Court. The trial Court taken cognizances and issued summons to the accused.

3. In order to prove its case, the appellant examined himself as P.W.1 and one Nagarajan, the Senior Executive of the Hindu Daily was examined as P.W.2 to prove the publication in the said news papers and one S.Ananth, working in M/s.Onkyo Limited was examined as P.W.3, Sivananthan Barai was examined as P.W.4, he spoke about the mental agony caused by the appellant due to the above defamatory publication. Apart from that he has marked the copy of the publication notice(Hindu paper) Ex.P1, Lawyer Notice Ex-Ex.P2, Reply Notice Ex.P3,

P.W.1's reply notice Ex.P4, Notice issued from the complainant to the accused Ex.P5, Advocate reply notice Ex.P6, Power of Attorney Ex.P7, Copy of the letter Ex.P8, Original Release Order Ex.P9.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false and they did not examine any witness, but they have marked the cheque said to have been issued by M/s.Onkyo Limited(Japan) to the appellant as Ex.D1. Considering all the above materials, the trial Court convicted the first accused and imposed a fine of Rs.5,000/- and convicted the accused 2 to 4 and sentence them to undergo two months simple imprisonment each and to pay a fine of Rs.5,000/- each, in default, to undergo one month simple imprisonment each. Challenging the the above said order of conviction, the respondent/accused filed Criminal Appeal in C.A.Nos.129 to 132 of 2006 on the file the I Additional Sessions Judge, City Civil Court, Chennai. The lower appellate Court, by its judgment dated 25.09.2006, allowed the criminal appeals and thereby acquitted the accused on the ground that P.W.1, in his evidence admits that he has passed on information to Japan shareholders, and it is established the case of the appellants that the respondent has passed the information to the Japanese shareholders without any authority, and the respondent is not justified in sending communication to the Japanese shareholders. In the above circumstances, the paper application given by the accused falls under Exception 9 to Section 499 IPC. Now, challenging the order acquittal, the present appeal has been filed.

5. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

6. The learned counsel appearing for the appellant vehemently contended that even though the appellant is working as General Manager(Finance) in the first accused company and during his tenure he had a occasion to scrutinize the financial activities of the first accused company and he detected some malpractices adopted by the 2nd and 3rd accused, illegally siphoned away huge funds from the first accused company. Apart from that the complainant also found that the first accused company was being mismanaged by the 2nd and 3rd accused. In the above circumstances, he was duty bound to inform the same to the shareholders, and nothing wrong in it. Apart from that a perusal of the notice which was issued on 02.03.2002 it was stated that the appellant had left the company, and requested to the general public not to have any conduct with him. Which is highly defamatory, as the appellant has left the company only in December, 2001. The appellant has no right issue such public notice asking general public not to have any conduct with him, which damaged the reputation of the appellants and also caused mental agony. The

trial Court has considered the entire materials rightly convicted the accused. But, the lower appellate Court without considering the materials, acquitted the accused relying upon Exception 9 to Section 499 IPC . Thus, he prays for allowing the appeal.

7. Per contra, M/s.K.Duraisamy, the learned Senior Counsel appearing for the respondents/accused submitted that it is the admitted case of the appellant/complainant has passed information of the company to other shareholder for which he was not authorized. Even though the appellant himself admitted that he is only a employee of the first respondent company and he has no business to discloses any of the information of the company to any shareholders. It is the admitted fact that the appellant has passed an information to the others without knowledge of the company. In the above circumstances, in order to protect the interest of the company, the public notice has been given. It is also admitted the fact that the accused left the company in December 2002. Since the appellant has left the company, and the accused issued the notice to the general public not to contact with him with regard to the company matters. The Lower Appellate Court has considered the entire material in proper perspective rightly acquitted the accused and there is no reason to interfere with the judgment of the Lower Appellate Court.

8. I have considered the rival submissions.

9. It is the admitted fact that the appellant was working as General Manager(Finance) in the first accused company. It is also admitted the fact that the second accused is the Managing Director and the third accused is the Director and fourth accused is the General Manager of the first accused company. Even though, some other persons have major shares in the above company, only the second and third accused alone managing the affairs of the company. It is also further admitted the fact that the accused passed an information of the internal affairs of the company to the other shareholders, which resulted in the majority shareholders withdrew their shares from the first accused company. In his cross examination, the appellant has categorically admitted that he has passed the information to the shareholders at Japan and he has also admitted that he was not authorized to pass any information. The appellant also admitted that he had gone to Germany and met the other shareholders and discloses the internal affairs of the company in the month of November,2001. He further admitted that only because of the information passed by the appellant, the other shareholders has withdrew their share in the first accused company.

10. It is the case of the respondents that the appellant was working as the General Manager(Finance) in the first accused company and he was not suppose to discloses the

affairs of the company to any shareholders and he was not authorised. Thereafter, he had also left the company in December,2001 and continued to act against the interest of the company. In the above circumstances, only in order to protect the interest of the company, the said publication has been issued in good faith to the employees of the company as well as the general public, stated that the appellant is no more associated with the first accused company and not to have any dealing with the appellant. The learned counsel appearing for the respondents contended that the act of the appellant is squarely fall under exception 9 to Section 499 IPC is reads as follows:-

> "9th exception:- Imputation made in good faith by persons for protection of his or other's interest-- 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.

11. The reading of the public notice issued by the respondents, it is shows that as the appellant was acting against the interest of the first accused company which affecting the internal affairs of the company. Hence, accused informed the employees of the company and others not to have any dealing with the appellant and also says that hereafter the company is not responsible for the act of the Appellant. Reading of the above publication notice and considering the conduct of the appellant, there is nothing defamatory. It is only a general notice to the employees of the company and also to others informing about the activities of the appellant, and also informed them not to have any contact with the Appellant in relation to the first accused company and the company also made it clear that they are not responsible for any of his commission in respect of the first accused company. In the above circumstances, I find force in the arguments of the learned Senior Counsel appearing for the respondents. The lower appellate Court considering all these materials has come to the conclusion that the act of the respondents fall under Exception 9 to Section 499 IPC and acquitted the accused and I find no illegality or perversity in the judgment of the lower appellate Court.

12. In the result, the Criminal Appeals are dismissed. The judgment dated 25.09.2006 passed in C.A.Nos. 129 to 132 of 2006 on the file of the learned I Additional Sessions Judge, Chennai is confirmed.

rrg/sji

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional Sessions Judge,
City Civil Court,
Chennai.

2.-do-thro The Principal Sessions Judge, Chennai

3.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

4.-do-thro The Chief Metropolitan Magistrate,
Egmore, Chennai 8

5.The Section Officer, Criminal Section,
High Court, Madras.

+2cc to M/s.Surana & Surana Advocate Sr.No.91414
+1cc to M/s.muthmani Doraisami, Advocate Sr.No.91631

SKV(CO)
sm:11.6.2018

Crl.A.Nos.569 to 572 of 2007