THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NOs.6297 & 8355 OF 2012

COMMON ORDER:

Crl.P.No.6297 of 2012 and Crl.P.No.8355 of 2012 are filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.332 of 2012 and C.C.No.7410 of 2012 respectively, on the file of XVII Additional Chief Metropolitan Magistrate Court, City Criminal Court, Nampally, Hyderabad, for the offence punishable under Section 500 I.P.C.

The petitioner/accused in Crl.P.No.6297 of 2012 and Crl.P.No.8355 of 2012 are the Chief Vigilance Officer and Chairman & Managing Director of UCO Bank, Head Office, Kolkata.

The complainant in both the criminal petitions is one and the same, the accused who filed the above respective criminal petitions are the Chief Vigilance Officer and Managing Director of the UCO Bank. The complainant alleged that he was defamed by affixing the imputations in the notice board on the date of his retirement, for which act, the complainant claims that his reputation was lowered in the society.

The facts of the case in brief as per the allegations in the private complaint are that the complainant was initially appointed as Probationary Officer in UCO Bank in the year 1977 and he got retired as General Manager PS Credit, RRB, Recovery, Monitoring, e-business. As a major blow to the complainant, the Management of UCO Bank served a show cause notice on 14.01.2012 calling upon the complainant to submit explanation to the allegations levelled against the complainant. It is alleged that the complainant released securities in the account of SSVG Group Accounts of Banjara Hills Branch, Hyderabad without verifying the records and without considering the report of one Mr. Gouthaman, Senior AGM, who conducted investigation. It is stated that the petitioner/accused referred the matter to Internal Advisory Committee and further, it was referred to CVC. In view of the illegalities and irregularities committed, the Management of UCO Bank issued show cause notice to the complainant.

It is stated in the complaint that the petitioner/accused got affixed charge sheets in the notice board of the Bank which lead to damage the reputation in the Bank as well as in his society. It is stated in the complaint that the act of the petitioner herein/accused caused injury to reputation of complainant.

The complainant filed private complaint against the petitioner/accused herein, upon which the XVII Additional Chief Metropolitan Magistrate, City Criminal Court, Nampally after recording the statement of the complainant, took cognizance of the case in C.C.No.332 of 2012. Crl.P.No.6297 of 2012 is filed by the petitioner/accused to quash the proceedings in C.C.No.332 of 2012.

It is mainly contended by the learned counsel for the petitioner/accused that the proceedings in C.C.No.332 of 2012 are unsustainable as the allegations made in the complaint against the petitioner/accused are vague and not specific. Even if the allegations are taken as true, in its entirety, those allegations would not satisfy the ingredients of the offence of 'defamation' as defined under Section 499 I.P.C., on that ground alone, the proceedings are liable to be quashed.

Crl.P.No.8355 of 2012 is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.710 of 2012 on the file of XVII Additional Chief Metropolitan Magistrate Court, City Criminal Court, Hyderabad, for the offence punishable under Sections 499 & 500 I.P.C r/w Section 200 Cr.P.C for defaming the complainant by affixing the imputations by the petitioner i.e. charge memos in the notice board on the date of his retirement.

The Courts at Hyderabad have no jurisdiction since the alleged offence said to have committed within the State of Kolkata.

It is also contended that the petitioner/accused issued report against the complainant while discharging his duties as General Manager (Vigilance) & Chief Vigilance Officer, UCO Bank and it does not amount to an offence punishable under Section 500 I.P.C. It is contended by the learned counsel for the petitioner that the proceedings initiated by the respondent in C.C.No.332 of 2012 are tainted with malafides by abusing process of Court and therefore, prayed to quash the proceedings in C.C.No.332 of 2012 against the petitioner/accused for the offences punishable under Section 500 I.P.C.

During hearing, learned Senior Counsel Sri P. Gangaiah Naidu contended that submitting report by the petitioner/accused while discharging his duties as General Manager (Vigilance) & Chief Vigilance Officer, UCO Bank is a part of duty and he was appointed in the said post only for the purpose of detecting frauds and irregularities committed by various employees in UCO Bank. It is further contended that, as the complainant being the highly placed executive in the UCO Bank committed several irregularities while discharging his duties, the matter was referred to the petitioner/accused and after examining the matter, the petitioner/accused issued report. It is contended that issuing report while discharging his duties against the complainant would not constitute an offence punishable under Section 500 I.P.C and thereby he is not liable for punishment and prayed to quash the proceedings against the petitioner/accused in C.C.No.332 of 2012.

In support of his contention, learned senior counsel appearing on behalf of the learned counsel for the petitioner placed reliance on the judgments in **V.K. Bagga v. O.P. Arora**[1], **Dr. Anil K. Khandelwal and ors v. Maksud Saiyed and anr.**[2], **Dilip Ranjan Sinha and others v. Manojbhai Bhaishankar Chandaliya**[3], **P. Sharma v. P.S. Popli**[4].

Whereas, learned counsel for the respondent contended that when the petitioner is claiming immunity on account of exceptions to Section 499 IPC, the proceedings cannot be quashed, as it is a question of fact and placed reliance on the judgment of this Court in **Harbhajan Singh v. State of Punjab**[5], **Standard Chartered Bank v. Vinay Kumar Sood**[6], **Shri Dagdu Ptole v. Shantaram Ganpat Dorge and State of Maharashtra**[7] and finally contended that issuing such report without any basis and ignoring the earlier reports of various authorities is nothing but an intentional insult

[1] 2007 Crl.L.J. 1101
[2] 2006 Crl.L.J. 3180
[3] 2002 Crl.L.J. 3229
[4] 2001 LawSuit (Del) 1558
[5] AIR 1966 SC 97
[6] 2010 CriLJ 1277
[7] 2004 (106(1)) Bom LR 694

to the complainant which lowered his reputation not only in the public, but also among the employees in the UCO Bank and such person cannot be allowed to scout free atleast to prevent such abuse of power in future and therefore, prayed to dismiss the criminal petition.

Based on the above contentions, the points that arise for consideration is as follows:

Whether the act of the petitioner/accused in issuing report after due enquiry would amount to defamation, as defined under Section 499 IPC. If so, whether there exists any grounds to proceed against the petitioner for the offence punishable under Section 500 of I.P.C.?

Before deciding the points formulated for consideration, it is apposite to advert to the definition of defamation.

Section 499 of I.P.C. defines offence of defamation and it is as follows:

> "**499. Defamation:-** Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.
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> *Explanation 1*:- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
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> *Explanation 2*:- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
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> *Explanation 3*:- An imputation in the form of an alternative or expressed ironically, may amount to defamation.
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> *Explanation 4*:- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or

> causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

Halsburys Laws of England, Fourth Edition, Vol. 28, defines 'defamatory statement' as under:

> ***"A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business."***

While speaking about reputation, William Hazlitt observed that "a man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof. The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it."

Reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is a revenue generator for the present as well as for the posterity. (vide "***Vishwanath Agrawal v. Saral Vishwanath Agrawal***[8]")

In "***Gian Kaur v. State of Punjab***[9]" the Apex Court observed that the right to reputation is a natural right and considered various covenants such as Universal declaration on Human Rights, International covenant on Civil and Political Rights, European Convention for the Protection of Human Rights

[8] (2012) 7 SCC 288
[9] (1996) 2 SCC 648

and Fundamental Freedoms, etc and thereafter considered Perception of the Courts in various countries and observed as follows:

> *"While deliberating on possible balance between the right to reputation and freedom of expression, in "**Campbell v. MGN Ltd.**[10]", it has been stated that Both reflect important civilized values, but, as often happens, neither can be given effect in full measure without restricting the other, How are they to be reconciled in a particular case? There is in my view no question of automatic priority. Nor is there a presumption in favour of one rather than the other. The question is rather the extent to which it is necessary to qualify the one right in order to protect the underlying value which is protected by the other. And the extent of the qualification must be proportionate to the need." Thus, causing any damage to the reputation of an individual, which caused injury to his reputation lowering him in the society would amount to defamation.*
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> *The essential nature of a defamatory statement is that it is one that causes an adverse effect on a person's reputation i.e., how it is viewed by others. A statement made should have a tendency to lower or adversely affect a person's reputation or if it exposes a person to "hatred or ridicule', or causes him to be 'shunned or avoided', or injures his reputation in the conduct of his trade or business or professional activity. To be defamatory, a statement need only have the tendency to affect a person's reputation; it need not actually lower it. However, the standard to be applied is whether his reputation is affected in the estimation of right-thinking members of the society generally as held in "**B.Kalyani v. District Collector, Villupuram**[11]"*

The word "defamation", general term for words spoken (slander) or written (libel) to the prejudice of a person's character, in such way as to support an action by such person against the speaker or writer.

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[10] (2004) UKHL 22 at para 55
[11] (2012) 2 MLJ 881

Thus, any statement published if affects reputation of any person, it would amount to defamation.

Defamation may contain either slander or libel.

In common law the origins of defamation lie in the torts of "slander" (harmful statement in a transient form, especially speech), each of which gives a common law right of action. Defamation is the general terms used internationally, libel is in written form. Libel and slander both require publication. The fundamental distinction between libel and slander lies solely in the form in which the defamatory matter is published. If the offending material is published in some fleeting form, as by spoken words of sounds, sign language, gestures or the like, then it is slander.

Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Thus, criminal defamation may contain either "libel" or "slander".

The specific allegation against the petitioner herein is that when he was working as General Manager (Vigilance) & Chief Vigilance Officer, UCO Bank, he allegedly found several irregularities committed in discharging duties by the complainant and submitted report without any basis, dragged him to an enquiry and recommended action on false allegations. The petitioner arrived at such conclusion to suit his mind without any basis on record and he recorded findings against the complainant. The contents of the report are nothing but falsehood and in such case, the report submitted by the petitioner would amount to abuse of process of the Court and the Vigilance Officer by taking advantage of his official position committed such a crooked act, which would amount to defamation. The other allegation is that the accused has affixed copy of such imputations and without making any attempt to verify the imputations affixed on the notice board, such act is malafide act of the petitioner. Such act would attract an offence punishable under Section 500 IPC. On account of such malafide acts of the petitioner/accused, the complainant suffered incalculable mental agony and torture on coming to know about such acts. The acts of the petitioner are highly defamatory which lowered the prestige or reduced the esteem of the complainant in the society at large i.e. among their relatives and therefore the complainant sought action against the petitioner. Similarly, the petitioner in Crl.P.No.8355 of 2012 (accused in C.C.No.710 of 2012) also got affixed the imputations on the notice board without following procedure i.e. service on respondent either in person and by registered post with a malafide intention to defame him.

The petitioner is a General Manager (Vigilance) & Chief Vigilance Officer, UCO Bank working in Head office at Kolkata. His duty is to conduct enquiries who allegedly committed irregularities in discharging duties, more particularly, the financial irregularities in discharging their duties enquiries and if any material is found against them, he should submit his findings to the concerned higher authorities of the bank. Accordingly, the petitioner conducted an enquiry against the complainant and found certain irregularities in discharging duties as a Manager occupied the senior position. Conducting enquiry and finding such irregularities whether it is with or without any basis by the petitioner is a part of his duty. If, for any reason, the material did not disclose such irregularity or official irregularity or illegality, certainly, the petitioner is bound to submit his report in negative who found certain material against the complainant, which is nothing but discharging his duty in his official capacity and no motive is attributable. Even if such allegations are made without any documentary basis, still, it is open to the petitioner to challenge before a competent authority, as per the regulations. But instead of approaching competent authority, the petitioner resorted to criminal litigation and drove the petitioner to such unethical criminal litigation. The petitioner is a General Manager (Vigilance) & Chief Vigilance Officer, UCO Bank occupied in highest post in the bank, more particularly, connected with Vigilance matters. It is nothing but obstructing him from discharging his duties, creating an apprehension that there is every possibility to proceed against him in criminal court in case any irregularity is found while discharging his duty as General Manager in Vigilance Department. It is nothing but abuse of process of the Court to wreck vengeance against the petitioner. In such cases, this Court can exercise its jurisdiction. Similarly, the petitioner in Crl.P.No.8355 of 2012 is the Chairman & Managing Director of the Bank who has nothing to do with such affixture. Even otherwise, question of affixture of imputations on the notice board by the top officials of the bank is highly impossible.

The petitioner allegedly committed such an offence, which is only during their employment. Such act would not attract any offence punishable under Section 500 Cr.P.C, as the enquiry is quasi judicial proceedings and the step taken to initiate an enquiry i.e. preliminary enquiry is a privileged act. When such libellous statement is made while discharging his duties, defence of privilege is applicable.

The general principle underlying the defence of privilege is the common convenience and welfare of society or the general interest of society. Privilege is of two kinds: the first is absolute and the second is qualified. When a statement is absolutely privileged, no action lies for it even though it is false and defamatory and made with express malice. On certain occasions the interest of society require that a man should speak out his mind fully and frankly, without thought or fear of consequences, e.g., in Parliamentary proceedings or in the course of judicial, military, naval proceedings. To such occasions, when a statement is given, such statement is attached with an absolute privilege. A statement is said to have a qualified privilege when no action lies for it even though it is false and defamatory, unless the plaintiff proves express malice.

Viz: 1) communications made

(a) in the course of legal, social or moral duty,

(b) for self-protection,

(c) for protection of common interest,

(d) for public good; and

2) reports of Parliamentary and judicial proceedings, and proceedings at public meetings.

Here, in the quasi judicial proceedings or quasi criminal proceedings the action for libel or slander is not maintainable. According to settled law laid down by various High Courts in India following the common law principles when a statement is made in judicial proceedings like affidavits and pleadings or any report in departmental proceedings, no action lies for a statement made by them in the affidavit or report in the course of judicial or quasi judicial proceedings, even though it is alleged to have been made falsely and maliciously, and without any reasonable or probable cause.

Similarly, the proceedings before an Enquiry officer i.e. Vigilance Officer of the bank and Managing Director of the Bank i.e. petitioners before this Court to take suitable action for the alleged irregularities also partakes the character of a Tribunal or an independent authority constituted under the provisions of UCO Bank Regulations.

In an identical situation, the Madras High Court **Rao Saheb Sedimbi Hanumantha Raw Vs. Nidumolu Seetaramayya[12],** his lordship Justice 'Burn' of High Court of Madras held in para No.5 as follows:-

> *"The authorities establish beyond all. question this: that neither party,, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognized by law, and this though the words written or spoken were written or spoken maliciously without any justification or excuse, and from personal ill will and anger; against the person defamed.*

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[12] 1942 (1) MLJ page 247

The principle laid down in the above judgment is directly applicable to the present facts of the case, for the reason that the petitioner in Crl.P.No.6297 of 2012 was enquiring authority in a quasi judicial proceedings and he conducted necessary enquiry, as per the rules to unearth the irregularities or fraud committed by the complainant in discharging his official duties, more particularly, the financial irregularities. His role is not of a Judge of a Court but an Investigating Agency. Even assuming for a moment that what the complainant stated that the imputations were made with a malafide intention or ill-will or, still it would not attract an offence punishable under Section 500 I.P.C, in view of the judgment referred supra. The petitioner in C.C.No.710 of 2012 was the Managing Director who has nothing to do with the enquiry. But, he is the competent person to take further action based on report of Vigilance Officer.

In a decision reported in **Goviind Ramachandra Vs. Gangadhar Mahadeveo[13],** wherein their Lordships Justice Divatia and Sen held in para 3 as follows:-

> *"It is quite clear, and it is also conceded, that by virtue of these provisions all proceedings before the Tribunal of the Bar Council are judicial proceedings. It is, however, urged that in the present case the High Court did not forward the complaint to the Bar Council on the ground that suitable action had been taken by itself, and as no judicial proceedings had been started against the plaintiff, the petition cannot be deemed to be absolutely privileged under the law. We are unable to accept this argument. It is no doubt true that if the High Court so chose it may not forward the complaint to the Bar Council. But if the High Court is satisfied that there are prima facie grounds for proceeding against an advocate, it sends the same complaint to the Bar Council on which the proceedings start. The complaint or the application to the High Court must, therefore, in our opinion, be regarded as an essential step for taking judicial proceedings. The law is summarized in **Halsbury's Laws of England, Hailsham Edition, Vol. XX, p. 465', para. 564**; as follows :-*
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> *"The privilege attaches not merely to proceedings at the trial, but to proceedings which are essential steps in judicial proceedings,*

[13] 1944 (46) BOMLR, page 417

> *including statements in pleadings and communications passing between a solicitor and his client on the subject on which the client has retained the solicitor and which are relevant to the matter.* "

Therefore, the steps in a judicial or Quasi Judicial proceedings attaches with absolute privilege and thereby the action for libelous statement is not maintainable.

In another Judgment reported in **Adivaramma Vs. Ramachandra Reddy[14],** Justice 'Wallis" held that "When the statement made in the counter affidavit which is defamatory in appeal filed against the order passed by the Court, no civil action will lie, basing on the judgment of Privy Council in **Ganesh Dutt Singh Vs. Mugneeram Chowdary[15],** and finally concluded that the suit is not maintainable and dismissed the suit.

Thus, in view of the law declared by various Courts in the judgments referred supra, the steps taken by the petitioners to initiate quasi judicial proceedings i.e. an enquiry against the complainant is a preliminary step in the said process and such statement is attached with an absolute privilege, to such steps in the process of initiating judicial or quasi judicial proceedings, as per Halsbury's Law of England. Therefore, on this ground, the proceedings for criminal actions are not maintainable for the offence punishable under Section 500 IPC.

Learned counsel for the complainant would contend that the petition cannot be quashed, as the act of the petitioner would directly fall within the definition of defamation under Section 499 IPC, since the petitioner was not authorized to affix imputations in

[14] 1910 (21) MLJ, page 85
[15] (1872) 11, B.L.R page 321, 328

the notice board to attract the attention of various employees which lowered the reputation of the complainant in the eye of public. Learned counsel placed reliance on three judgments in support of his contention.

In **Harbhajan Singh v. State of Punjab**[16], the Full Bench of the Supreme Court discussed the scope of the offence punishable under Section 500 IPC with reference to Criminal Procedure Code and Indian Evidence Act, where the Supreme Court discussed regarding 'good faith' and held in paragraphs 20 & 21 as follows:

> "20. That takes us to the question as to what the requirement of good faith means. Good faith is defined by S. 52 of the Code. Nothing, says S. 52, is said to be done or believed in 'good faith which is done or believed without due care and attention. It will be recalled that under the General Clauses Act, "A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not." The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Code; and we governed by the definition prescribed by S. 52 of the Code. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention. There is /B(N)3SCI--3 no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility. As has held by the Calcutta High Court in the matter of the Petition of Shibo Prosad Pandah(1), in dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in. substance true, but whether he was informed and had good. reason after due care and attention to believe that such allegations were true.
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> 21. Another aspect of this requirement has been pithily expressed by the Bombay High Court in the case of Emperor v. Abdool Wadood Ahmed[I.L.R. 31 Bom.293]. "Good faith", it was observed "requires not indeed logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want

[16] AIR 1966 SC 97

> of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question." "It is only to be expected", says the judgment, "that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression .of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment."

Following the judgment in **Harbhajan Singh** case, the Delhi High Court reiterated the same principle in **Standard Chartered Bank v. Vinay Kumar Sood & ors**[17]**.** In **Shri Dagdu Patole v. Shantaram Ganpat Dorge and State of Maharashtra**[18], the Bombay High Court discussed about the act which amounts to 'good faith'.

In view of all the three judgments, the question was whether proceedings shall be continued in criminal Court on the ground that the statement is made in good faith, whether it amounts to defamation or not and statement if made in good faith, it would fall within exceptions contained under Section 499 IPC and the petitioner if claimed protection under the exceptions to Section 499 IPC, which is purely a question of fact, such defence cannot be decided while deciding an application under Section 482 of Cr.P.C. Such disputed question cannot be debated while deciding an application under Section 482 Cr.P.C. Therefore, on the ground that the petitioner made such imputations in good faith, the proceedings cannot be quashed. But, here, it is a totally privileged

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[17] 2010 Crl.L.J.1277
[18] 2004 (106) (1) BOMBLR 694

statement, i.e. absolute privileged statement, both the petitioners are not claiming the relief of quashment based on exceptions.

Learned senior counsel Sri Gangaiah Naidu appearing for the petitioner would contend that asking him to receive report of disciplinary proceedings would not amount to defamation based on the principle laid down in **V.K. Bagga v. O.P. Arora**[19], where the Supreme Court held that asking delinquent employee to receive report of disciplinary inquiry is a legal requirement without which company could not have completed departmental action, publication of notice to fulfil such requirement cannot be treated as defamatory.

Similarly, in **Dr. Anil K. Khandelwal and ors v. Maksud Saiyed and another**[20], Gujarat High Court held that utilising of the forum of Criminal Court by the complainant for an oblique purpose and to pressurise the Bank for withdrawal of its recovery proceedings pending before the DRT was not proper. The other purpose may also be that the bank may surrender, domain of the complainant which is raised in the Civil Court. Here also, disciplinary proceedings are pending as on the date of imputations and alleged affixure on notice board on the date of complainant's retirement from service as senior official in the bank. When the complainant did not refuse to receive said imputations on the date of retirement, then there is no illegality in affixing imputations in the notice board and even assuming for a moment that the affixure has taken place, the General Manager, Vigilance or Managing

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[19] 2007 Crl.L.J. 1101
[20] 2006 Crl.L.J. 3180

Director of Bank will not go to the notice board and affix the same in the notice board in the open place and there is absolutely no possibility of affixing the imputations by any of the staff members in the notice board on the date of retirement. The fallacy in the contest of complainant is that both petitioners (accused) in both cases affixed imputation on notice board of the officers, but, it is a commonsense of any employee that Managing Director or Chief Vigilance Officer (top officials) of the Bank would not take up the duty of a peon or office subordinate to affix imputation on the notice board, that too one copy of imputation by Charged Officer. Therefore, affixure of such imputations in the notice board by some one else in the department, the petitioners cannot be saddled with any criminal liability. Therefore, on this ground, the proceedings cannot be maintained.

Apart from that, it is nothing but coercing the high officials of the bank to come to the terms of the complainant or to demand using criminal law as a tool of harassment to wreck vengeance against them for making such imputations. In such case, it can safely be concluded that it is nothing but abuse of process of the Court and thereby the criminal proceedings cannot be continued.

Learned senior counsel for the petitioner Sri Gangaiah Naidu further contended that when a letter is sent in official capacity to the superior officer complaining misbehaviour that the staff cannot be adverse to the accused with an intention and motive of vide publication of defamation. On plain reading of the complaint, the ingredients of Section 500 IPC are not satisfied. (vide **Dilip Ranjan Sinha and others v. Manojbhai Bhaishankar Chandaliya**[21]).

In view of the law declared by various High Courts, initiation of departmental proceedings against the complainant and serving imputations by affixure by someone else on the notice board in the office, based on the report of the petitioner would not attract an offence punishable under Section 500 IPC *prima facie*.

Regulation 20 of Conduct and Discipline & Appeal Regulations, 1976 of UCO Bank deals with Service of orders, notices etc, which states that every order, notice and other process made or issued under these regulations shall be served in person on the officer or employee concerned or communicated to him by registered post at his last known address. But, here, instead of resorting to the procedure under Rule 20 for service of notice on the complainant, it appears that the imputations were affixed in the notice board. Of course, such affixure is contrary to Rule 20. In such case, no criminal liability can be attributed to this petitioners *prima facie* on account of such affixure of notice.

One of the contentions raised in the petition is that the Courts at Hyderabad have no jurisdiction, as the offence is allegedly committed in the Head office at Kolkata by affixure of imputations i.e. charge memos on the notice board on the date of the retirement of the petitioner. The reputation of the complainant, if any, would be lowered only within the vicinity of Kolkata territorial jurisdiction, but not in Hyderabad City area, as the

[21] 2002 Crl.L.J. 3229

imputations made against the complainant came to the notice of the employees working in the Head Office and through them to the outsiders. However, in view of my findings on the other grounds, there is no necessity to record any findings with regard to jurisdiction of the Courts at Hyderabad to try and decide the calendar case.

The complainant filed C.C.No.117 of 2012 & W.P.No.2201 of 2012 before this Court against the petitioner challenging the charge memos issued against him, questioning the show cause notices dated 14.01.2012 and 24.01.2012 issued by the Bank. This Court vide order dated 28.07.2012 dismissed both the contempt case and writ petition. It is observed by this Court in the contempt case that except serving charge memos and a proceeding under Regulation 20(3)(iii), the bank has not taken any other action against the complainant and mere service of charge memos for the disciplinary enquiry proposed to be held cannot be said to be a punitive action and it cannot be said that any cause of action arises for trying the bank authorities under the Contempt of Courts Act. Aggrieved the said order, the complainant filed W.A.No.993 of 2012 and the Division Bench of this Court passed an interim order permitting the bank to proceed with the enquiry and the said writ appeal is pending before this Court. Thus, the petitioner in Crl.P.No.6297 of 2012 as a disciplinary authority issued such proceedings and issue of such proceedings like affixure of imputations, if any, on the notice board would not amount to defamation. Even otherwise, the petitioner/accused issued never directed any of the staff members either in writing or oral to affix those imputations on the notice board on the date of the retirement of complainant. In the absence of any allegation in the complaint and material to substantiate that the petitioner himself affixed those imputations in the notice board or passed any order directing the staff members to affix those imputations on the notice board, the petitioner/accused cannot be saddled with any liability for prosecution for the offences punishable under Section 500 IPC. In fact, it was not his case that he himself affixed or passed any order directing any staff member to affix those imputations on the notice board. Therefore, it is difficult to connect the petitioner with such an offence punishable under Section 500 IPC, who is a highly placed officer in Vigilance Department.

The petitioner/accused discharged his duties and submitted his report based on the material by conducting an enquiry in quasi judicial proceedings and if, the complainant is allowed to proceed against such person, it would be difficult for any officer in the Vigilance Department or Higher Officials i.e. Controlling Authorities to initiate any action against the subordinate staff who are involved in misappropriate or misconduct and thereby, entertaining such complaint would give room to anarchy in the administration in the departments concerned and it is nothing but directly giving passport to employees to commit such irregularities and misconduct themselves while discharging their duties. If any action is initiated or information is passed on to anyone of the higher official or controlling authority to take action, they will file criminal cases either defamation or under any provision to make them criminally liable. In such case, it is difficult to run the office affairs of the department in regular administration. Moreover, the efficiency of the controlling authority will be reduced sharply to the minimum extent and the administrative head may not venture to take departmental action against anyone of the employees under his control, being a controlling authority apprehending criminal or civil litigation even for the acts done by them in discharging their official duties. Therefore, necessary protection is to be provided to such officials at least to protect the administrative powers of the administrative authorities to control the subordinates in the department. Hence, I find that the action of the petitioner/accused would not attract any of the offence punishable under Section 500 IPC. The petitioner in Crl.P.No.8355 of 2012 also placed on the same lines of the other petitioner.

In ***State of Karnataka*** v. ***L. Muniswamy and Ors.***[22], the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

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[22] AIR 1977 SC 1489

In **State of Haryana** v. **Bhajan Lal**[23] this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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.

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[23] 1992 Supp. (1) SCC 335

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.

In view of guidelines 1, 6 & 7, criminal proceedings cannot be allowed to be continued against the petitioner, as the proceedings are initiated to wreak vengeance by abuse of process of the law.

Further the allegations levelled against the petitioner in Crl.P.No.6297 of 2017 are almost identical to the present Crl.P.No.8355 of 2012 i.e. defaming the complainant by affixing the imputations i.e charge memos in the notice board on the date of his retirement by the petitioner.

I unable to accept the contention that the petitioner who is in the cadre of Chairman & Managing Director of UCO Bank has walked all the way and affixed the imputations i.e. charge memos in the notice board at Head Office, Kolkata, as is totally unbelievable. Adding to this, there is no whisper that the petitioner issued any direction to the subordinate staff to affix the imputations in the notice board either orally or in-writing. The bank authorities have conducted enquiry as per the procedure and only issued show cause notice/charge memo by affixing the imputations on the notice board.

Therefore, in view of my foregoing discussion, I do not find any merit in these criminal petitions and they are liable to be quashed.

In the result, both the criminal petitions are allowed by quashing the proceedings in C.C.No.332 of 2012 and C.C.No.710 of 2012 on the file of XXIII Additional Chief Metropolitan Magistrate Court, City Criminal Court, Nampally, Hyderabad.

Consequently, miscellaneous applications pending if any shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

DATED:30.03.2017

SP

Note:
Cc by 03.04.2017
b/o
SP