

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2018

Pronounced on : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.15435 of 2016

and

CRL M.P.Nos.7632/2016 & 9708/2017

1. Madhu P Desai
Trustee of NSEL Aggrieved and
Recovery Association (NAARA),
 2. NSEL Aggrieved and Recovery Association (NAARA)
Represented by its Trustee,
- ... Petitioners/Accused

Vs.

M/s.Financial Technologies (India) Limited,
Represented by its Authorised Signatory
Mr.John Dheepak,
Having its registered office at
Shakti Towers - 1, 7th Floor,
Premises E, 766,
Anna Salai, Thousand Lights,
Chennai - 600 002.

...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.3023 of 2016 pending on the file of XIVth Metropolitan Magistrate Court, Egmore and quash the same.

For Petitioners : Mr.K.P.Sanjeev kumar
for M/s.OJAS LAW FIRM

For Respondent : Mr.P.S.Raman,
Senior Counsel
Mr.Vaibhav R.Venkatesh

O R D E R

This petition has been filed by the accused 1 and 2 under Section 482 of Cr.P.C to quash the proceedings in C.C.No.3023 of 2016 on the file of XIV Metropolitan Magistrate, Egmore, Chennai.

2. The learned counsel for the petitioners has submitted that the respondent Company is involved in several fraudulent activities and hence several complaints have been filed against their Promoters / Directors. The respondent Company has collected money from the public and subsequently, they have cheated and hence, the investors have formed an Association under the name and style of NSEL Aggrieved and Recovery Association (NAARA) to protect the interest of the investors. He further submitted that a case was registered by the Economic Offences Wing (EOW), Bombay, in Crime No. 89 of 2013, against the respondent and its Board of Directors, under Sections 409, 465, 467, 468, 471, 474, 477 (A) r/w 120 (B) and Sections 3 & 4 of MPID 1999. He further submitted that in that case, charge sheet has been filed and EOW has issued look out notice against key office bearers of the said company. He further submitted that the petitioners have only written true facts about the fraudulent activities of the respondent and they have not made any false, derogatory statements, or posted any content whatsoever with a malicious intention or mislead the general public against the respondent Company.

3. He further submitted that the respondent has filed a private complaint as if the petitioners herein have committed offence punishable under Sections 499, 500 and 501 of IPC and based on the said complaint, the XIV Metropolitan Magistrate, Egmore, Chennai has taken the case on file in C.C.No.3023 of 2016. He further submitted that since the petitioners have published only true facts with a view to give a caution to the general public, the aforesaid complaint is not maintainable. He further submitted that in respect of the same facts already a case has been filed in C.C.No.198/SW of 2015 on the file of the Additional Chief Metropolitan Magistrate, 38 Court, Ballard Pier, Mumbai and hence for the same set of facts, the second complaint is not maintainable. Therefore, he prayed to quash the proceedings against the petitioners in C.C.No.3023 of 2016 on the file of XIV Metropolitan Magistrate, Egmore, Chennai.

4. Mr.P.S.Raman, learned Senior counsel for the respondent has submitted that the earlier complaint in C.C.No.198/SW of 2015 on the file of the Additional Chief Metropolitan Magistrate, 38 Court, Ballard Pier, Mumbai has been filed against one of the trustees of the petitioners namely Ketan Anil

Shah and he has filed a Criminal Application No.67 of 2016 before the Hon'ble High Court of Bombay to quash the aforesaid case. He further submitted that the Hon'ble High Court of Bombay has dismissed the said application stating that a prima facie case has been made out against the said persons. As against the said order, the said Ketan Anil Shah has filed Special Leave Petition in SLP.Nos.5731-5732/2017, but the said petitions were dismissed by the Hon'ble Supreme Court of India on 11.08.2017. He further submitted that the earlier complaint was filed with regard to the offence said to have been committed in the year 2013, whereas the present complaint has been filed with regard to the offence committed subsequently. He further submitted that both the offences are separate and independent and hence there is no bar for proceeding with this second complaint and therefore he prayed to dismiss the above petition.

5. Section 499 of IPC defines Defamation which reads thus: "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.

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.

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. An imputation in the form of an alternative or expressed ironically, may amount to defamation.

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."

6. In the aforesaid Section, ten exceptions are mentioned. The petitioners are relying upon the first exception which reads as follows:-

"First exception: It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

7. From the aforesaid provision, it is clear that it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. It is also clear that whether or not it is for the public good is a question of fact. Question of fact cannot be decided in the petition filed under Section 482 Cr.P.C. Question of fact can be decided only after taking evidence before the trial Court.

8. It is also relevant to refer to Section 105 of the Indian Evidence Act, 1872 which reads thus:-

"105. Burden of proving that case of accused comes within exceptions:-

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code 45 of 1860, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

A plain reading of the aforesaid provision shows that the burden is upon the accused to prove that his case comes within exceptions. Accused can prove his case only by adducing evidence. Further, as per the above provision, the court shall presume the absence of such circumstances. Therefore at this stage the court cannot look into the defence set up by the accused.

9. It is also to be pointed out that admittedly, the respondent herein has already filed a complaint in respect of the offence said to have been committed by the accused therein in C.C.No.198/SLW of 2015 on the file of the Additional Chief Metropolitan Magistrate, 38 Court, Ballard Pier, Mumbai. The accused therein has filed a Criminal Application No.67 of 2016 before the Hon'ble High Court of Bombay to quash the proceedings against him. But, the Hon'ble High Court of Bombay has dismissed the said application stating that the defence of truth

cannot be available to the accused as of now. As against the said order, the accused has filed SLP petition before the Hon'ble Supreme Court of India and the same was also dismissed by the order dated 11.08.2017. The aforesaid order will squarely apply to this case also. Therefore, this petition is liable to be dismissed.

10. In the result, this Criminal Original Petition is dismissed. The learned counsel for the petitioners has submitted that the petitioners are at Bombay, and it will be very difficult for them to come over to Chennai for each and every hearing and hence, he requests to pass orders to dispense with their personal appearance before the trial Court. Considering the said request, the personal appearance of the petitioners before the trial Court is dispensed with. The petitioners should appear before the trial court as and when required by the trial court. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.XIVth Metropolitan Magistrate Court,
Egmore, Chennai.

2.-do-Throuh-Chief Metropolitan Magistrate,
Egmore, Chennai

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.P.Sanjeev Kumar, Advocate, S.R.No.57417

+2cc to Mr.Vaibhav R. Venkatesh, Advocate, S.R.No.57390

Crl.O.P.No.15435 of 2016
and

CRL M.P.Nos.7632 of 2016
& 9708 of 2017

SVN(CO)
GSP(19/09/2018)