

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2018

DELIVERED ON: 31.07.2018

CORAM :

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

Crl.O.P.No.20937 of 2012,
Crl.O.P.No.24363 of 2012,
Crl.O.P.No.26228 of 2012,

and

Crl.M.P.Nos.1 of 2012 and 1 of 2013

in Crl.O.P.No.20937 of 2012

1. M/s Bennett Coleman and Company Ltd.
Owner of the Times of India,
Rep. by Santhanagopal,
126/127, Chamiers Road,
Nandanam, Chennai-35.
2. S.Santhanagopalan, Publisher,
Chennai Edition, Times of India,
126/127, Chamiers Road,
Nandanam, Chennai-35.
3. Sunil Nair, Editor and Person for
selection of news under PRB Act,
Times of India,
126/127, Chamiers Road,
Nandanam, Chennai-35.

... Petitioners/Accused

Vs.

R.Subramanian

... Respondent/Complainant

in Crl.O.P.No.24363 of 2012

1. M/s Bennett Coleman and Company Ltd.
Owner of the Economic Times,
The Times of India Building,
Dr.D.N.Road, Mumbai 400 001.

2. M/s Bennett Coleman and Company Ltd.
Owner of the Economic Times,
Rep. by S.Santhana Gopalan Publisher,
No.126/127, Chamiers Road,
Nandanam, Chennai.
3. Santhanagopalan, S,
Publisher Chennai Edition,
Economic Times,
4. R.Krishnamoorthy,
Publisher Mumbai Edition,
Economic Times,
The Times of India Building,
Dr.D.N.Road,
Mumbai 400 001.
5. R.Sriram, Economic Times,
The Times of India Building,
Dr.D.N.Road,
Mumbai 400 001.
6. Sriram Ramakrishnan, Editor,
(Southern Market) and person responsible for
selection of news under the PRB Act for Chennai Edition)
Economic Times, 126/127, Chamiers Road,
Nandanam, Chennai-35.
7. Bodhisatva Ganguly, Editor,
and Person responsible for selection of news under the
PRB Act for Mumbai Edition),
Economic Times, Mumbai,
The Times of India Building, Dr.D.N.Road,
Mumbai 400 001. ... Petitioners/Accused

Vs.

R.Subramanian ... Respondent/Complainant

In CrI.O.P.No.26228 of 2012

Azim H.Premji, c/o Wipro Limited,
Doddakannelli,
Sarjapur Road, Bangalore 560 034
Also at Survey No.75, 133, 135/1,
136/1, Doddakannelli, Sarjapur Road,
Bangalore 560 034. ... Petitioner/Accused

Vs.

1. Subhiksha Trading Services Limited rep. by its
Managing Director Mr.R.Subramanian, Cabin A,
Flat No.2, II Floor, Habib Complex No.5,
Dr.Durghabhai Deshmukh Road,
Chennai-28.
2. R.Subramanian,
Cabin A, Flat No.2, II Floor, Habib Complex No.5,
Dr.Durghabhai Deshmukh Road,
Chennai-28. ... Respondents/Complainants

Prayer in Crl.O.P.No.20937 of 2012:-

Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2242 of 2012 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

Prayer in Crl.O.P.No.24363 of 2012:-

Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2243 of 2012 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

Prayer in Crl.O.P.No.26228 of 2012:-

Criminal Original Petition filed under Section 482 of Cr.P.C to stay the proceedings in Criminal Complaint No.2875 of 2011 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and call for the records in Criminal Complaint No.2875 of 2011 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners in Crl.O.P.No.20937 and
Crl.O.P.No.24363 of 2012 : Mr.Prashant Rajagopal

For petitioner in Crl.O.P.No.26228
of 2012 : Mr.Manoj Pandian
and A.Abdul Ahameed

For Respondent in all
petitions : Mr.Prakash Goklaney

COMMON ORDER

The petitioners in both the petitions in Crl.O.P.No.20937 of 2012 and Crl.O.P.No.24363 of 2012 one and the same namely M/s Bennet Coleman and Company Limited having many newspapers, out of which the two viz, "Economic Times " and " Times of India " are the ones which have been subjected to in the criminal litigation. The crux of the issue is that

the respondent/complainant's company was ordered to be wound up and a liquidator was appointed which were reported by both these newspapers in their characteristic manner respectively.

2. The petitioners had contended that both the news items were only reporting of the events which had already taken place and did not contain anything, which was untrue and especially the one in "Economic Times " was based on inputs received from some of the employees of the complainant's company. The "Economic Times" also carried an interview with Mr.Azim Premji (petitioner in Crl.O.P.No.26228 of 2012), founder of WIPRO, who had stake in the complainant's company and which also according to the complainant, both the news items were intended to harm his reputation and his company, which according to him was a pioneer in retailing, doing very well in terms of business

3. The petitioners on their side have contended that their news items were based on detailed investigations and that the complainant's company had reputed investors like Azim Premji and ICICI Venture Private Limited, which generated great public interest and it was the duty of the responsible newspaper to present the factual position before the public. In the interview of Mr.Azim, one of the stake holders of the complainant's company, it was stated by him that

"Subhiksha was an error. You may see more visibility on it going forward, let's wait till then. Subhiksha was unfortunate. I think it's a retail equivalent of Satyam. I think the media has completely ignored it, it's a very interesting minefield for you. It's an out and out fraud, there's no question on it. The Company Law Board is investigating it. There was an overstatement of accounts, fake inventory, fake bills, fake companies that money was transferred to. At the time of investment that was not visible to us"

According to the petitioners, they have been maintaining very high standards of honest journalism and unbiased approach towards reporting on the basis of authentic information and evidence irrespective of any body's public image or stature.

4. In this context, the order passed by this court in C.P.No.68 of 2009 dated 29.02.2012 assumes significance. Some of the observations made in the above said order, which are furnished below gives a clarity on the subject.

Further, the above factual position as narrated by the Board of Directors itself shows

that the respondent company is not able to have control over its own stocks, assets, etc. It is a very strange situation wherein the respondent company even as on date is not able to bring to light its actual assets available apart from existence of its stocks.

.. In any event, the respondent company which has just raised such a huge amount from various creditors is bound to explain as to what are the assets available as on date. When the respondent company is totally out of control in respect of its assets, there is no purpose in refusing to interfere at least at this stage to find out as to whether there are any assets available and to retain the same in the interest of creditors to a limited extent.

Admittedly, there are umpteen number of cases where the employees are making demands for their dues, because there was no control by the Board of Directors of the respondent company over the shops throughout India and there was vandalism and ultimately, the creditors whether they are lending creditors like, banks or non-lending creditors like, suppliers and persons who have rendered services will be left in lurch ".

... Therefore, this court cannot permit consciously, the transfusion of the blood of several members of the public to a patient who has suffered multiple organ failure and various other ailments and whose chances of survival depends only on miracles. "

It is therefore clear that both the newspaper items were only based on the various inputs, including the observations made by this court and they are in no way intended to harm the reputation of the complainant.

5. Mr.Azim Premji is one of the investors in the respondent's company and when asked about his decision for his investment, after the literal collapse of the complainant's company stated as follows.

"Subhiksha was an error. You may see more visibility on it going forward, let's wait till then. Subhiksha was unfortunate. I think it's a retail equivalent of Satyam. I think the media has completely ignored it, it's a very

interesting minefield for you. It's an out and out fraud, there's no question on it. The Company Law Board is investigating it. There was an overstatement of accounts, fake inventory, fake bills, fake companies that money was transferred to. At the time of investment that was not visible to us"

6. Mr.Azim Premji being one of the very successful business man of the country being a stakeholder in the complainant's company itself had an element of value addition. As already narrated earlier about the observation made by this court in C.P.No.68 of 2009, the complainant's company was in doldrums having neither stocks nor assets for the company to even survive and following the similar paths of M/s Satyam Computers the statement of Mr.Azim Premji, the petitioner in CrI.O.P.No.26228 of 2012 is only a statement made in good faith. In fact, by the time, his interview was published as many as 43 shell companies were detected through which transactions were made making things apparant as to where the complainant's company went wrong. Strictly speaking his statement in the interview has not cast any aspersion directly on the complainant and it was only on the company and that too based on the findings of the various statutory Agencies.

7. It is also relevant to extract the X exception of Section 499 of the Indian penal Code.

Tenth Exception - Caution intended for good of person to whom conveyed or for public good. - It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

8. In this backdrop, the decisions relied on by the learned counsel for the respondent/complainant in (i) Alli Rani Joseph Mathew and 3 others Vs. P.Arunkumar in CrI.O.P.No.10481 of 2012 dated 03.08.2012, (ii) M.Arumugm Vs. Kittu @ Krishnamoorthy Vs in Criminal Appeal No.1749 of 2008 dated 7.11.2008 (iii) Sudershan Vs.P.Sankaran reported in 1992 (2) Crimes 465 (1992), would not apply to the facts of the present case. since

(i) though the Apex court has held that no absolute privilege attaches to the averment in a criminal complaint made in the court and that the privileges qualified in the sense the defamatory statement must have been made in good faith, in the

instant case, the allegations made against the complainant were regarding his financial indiscipline which later was proved to be true and therefore, there was element of good faith in the allegations made by the petitioners.

[ii] It cannot also be said that it is too premature to conclude that averment were made in good faith in the instant case for the simple reason that the petitioner had stakes in the complainant's company and as a stake holder, had every right to be concerned about the health of the company.

Therefore, it is not necessary to direct the petitioners to face criminal trial as it cannot be said that they had any personal agenda against the respondent/ complainant. Hence for all the reasons stated above, the proceedings in C.C.No.2242 of 2012, C.C.No.2243 of 2012, and C.C.No. 2875 of 2011 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai is liable to be quashed.

9. In the result, the Criminal Original Petitions in CrI.O.P.No.20937 of 2012, CrI.O.P.No.24363 of 2012 and CrI.O.P.No.26228 of 2012 are allowed and the proceedings in C.C.No.2242 of 2012, C.C.No.2243 of 2012 and C.C.No.2875 of 2011 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai are quashed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mst

To

1. The XVIII Metropolitan Magistrate, Saidapet, Chennai.
2. The Public Prosecutor, Madras High Court.

+1cc to Mr.Prashant Rajagopal, Advocate, S.R.No.52270

+1cc to Mr.P.H.Manoj Pandian, Advocate, S.R.No.52255

CrI.O.P.No.20937 of 212
CrI.O.P.No.24363 of 2012 and
CrI.O.P.No.26228 of 2012

KJ(co)

CS/27/08/18