

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2018
Pronounced on : 27.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.Nos.672 to 681 of 2014

R.Subramanian

...Petitioner in
Crl.RC.No's.672 to 681/14

Vs.

1. The HongKong and Shanghai Banking Corporation (HSBC),
rep. by Mr.Stuart A Davis,
Chief Executive & India Head,
No.52/60, MG Road,
Fort, Mumbai - 400 001.Ist respondent in
Crl.RC.672/14

2. Neeraj Datt Upadhyay ...Second Respondent in Crl.RC
672/14

3.ICICI Bank Limited
Rep by its Managing Director
Ms.chandra kochhar
Corporate office
ICICI bank Towers
Bandra Kurla complex
Mumbai-4000 51 ...Ist respondent in Crl.RC.No.673/14
678/14

4.K.R.S.Varadhan ...2nd Respondent in Crl.RC.No.673/14
678/14

5.Kotak Mahindra Bank
Rep by its Managing Director
Mr.Uday Kotak
36-38 A "Nariman Bhavan
No.227 Nariman Point
Mumbai-400 021

...Ist Respodnent in Crl.RC.No.674/14
675/4, 676/14,677/14,680/14,681/14
..2nd Respondent in Crl.RC.674/14,675/14
676/14 , 677/14 681/14

7.M.A.Kuvadiah
8.V.Vijayan

...Respondent in Crl.RC.679/14
..2nd Respondent in Crl.RC.No.680/14

Prayer in Crl.R.C.No.672 of 2014: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 18.03.2014 passed in Crl.M.P.No.2396 of 2013 Crl.MP.No.3403/13, Crl.MP.3405/13, Crl.MP.No.3404/13, Crl.MP.No.3402/13, Crl.MP.No.1787/13, Crl.MP.No.2400/13, Crl.MP.2399/13, Crl.MP.No.2398/12 Crl.MP.No.2397/12 in C.C.No. (unnumbered) of 2014 by the learned VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner :Mr.Prakash
Goklaney in all the revisions

For Respondents:Mr.Karthick Seshadri in
Crl.RC.674 to
677 & 680 & 681 of 2014

Mr.A.Sasidharan for M/s.Srinath
Sridevan in Crl.RC.No.672 of 2014

Mr.Suresh for M/s.Shivakumar & Suresh
in Crl.RC.Nos.673 & 678 of 2014

Crl.RC.No.679/14 - Notice not served

COMMON ORDER

It is the case of the petitioner/complainant in all the revisions that the respondents/Banks/Financial Institutions, had made defamatory statement against the petitioner, with an intention to cause harm to the reputation of the complainant and his company, which is pioneer of retailing with a chain of stores across the Country. Hence he preferred private complaints before the learned VII Metropolitan Magistrate, George Town, Chennai. The learned Magistrate, after perusing the sworn statement of the petitioner/complainant had dismissed all the complaints, against, which, the present criminal revisions have been preferred.

2 As the facts and submissions are similar, all the revisions are disposed of, by this common order.

3 The learned counsel for the petitioner/complainant would submit that at the time of taking complaint on file, the Magistrate has to see the averments made in the complaint, and if there is allegation to take the complaint on file, there is no bar to summon the accused, even though if there is any civil

dispute is pending. The learned counsel has taken support of order dated 03.08.2012 of this Court made in Crl.O.P.No.10481 of 2012 in the case of Alli Rani Joseph Mathew vs. P.Arun Kumar. In the present case, when the offences are made out in the complaints, the learned Magistrate ought to have taken the case on file and issue summons to the accused, but, he failed to do so, which warrant interference of this Court.

4 The learned counsel for the respondents in all the revisions would contend that the petitioner/complainant is a chronic defaulter in repaying the loan borrowed. He borrowed several crores from several Banks and had not repaid. The petitioner has filed various petitions before various forums and all were resulted in failure. The learned counsel for the respondents in Crl.RC.Nos.674 to 677 & 680 & 681 of 2014 took the attention of this Court to the order dated 31.07.2018 passed by this Court in 482 proceedings, wherein, earlier complaints filed by the petitioner with similar allegations, had been quashed. The learned counsel appearing for the respondents in Crl.R.C.Nos.673 & 678 of 2014 has produced the order dated 05.06.2015 of this Court made in Crl.R.C.Nos.27 to 30 of 2015, which were filed against the order of dismissal of the complaints filed by the petitioner. This Court, after perusing the relevant records, had dismissed the above criminal revisions. The learned counsel submitted that they have made recovery proceedings in the manner known to law.

5 The respondents/Banks, in order to substantiate their case and to protect interest of the Banks, had made the statement in legal proceedings, which does not amounts to defamatory statement. Further there are various petitions pending before the various forums and hence the learned Magistrate has rightly dismissed the complaints filed by the petitioner.

6 Heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

7 It is settled proposition of law that any amount of defence taken by the respondents/defendants, must be proved with substantial materials. It is true that when any statement or averment stated to be a defamatory, the person can file complaint, there is no bar to summon the accused, even though, if there is any case is pending.

8 A careful reading the averments made by the respondents, which stated to be defamatory, would go to show that it is a defence taken by the respondents, in order to protect their interest. The respondents/Banks can made any averments or allegations or defence in the legal proceedings,

provided that they have to substantiate their averments or allegations with documentary proof, which can be decided only after trial. If the Court found any allegations are scandalous, frivolous, vexatious, then it shall be struck off. Now the question, which has to be decided is whether the statement made by the respondents/Banks in some legal proceedings, amount to defamatory or not. This Court is of the view the statements made by the respondents/Banks, which are alleged to be defamatory, is only a defence taken by them to protect their interest and it is for them to prove by way of oral and documentary evidence, at the time of trial, with substantial materials.

9 Though, it is settled proposition of law that, the Court, at the time of entertaining complaint, has to see the allegations made in the complaint and not the defence, but at the same time, considering the facts and circumstances of the present cases, and background of the facts leading to file the present complaints, this Court is of the view that whether the statements made by the respondents/Banks amount to defamatory or not is a matter to be decided after producing evidence on this, during trial and no prejudice would be caused to the petitioner. Under the said circumstances, the citation referred to by the learned counsel for the petitioner is not made applicable to the present case on hand.

10 In the result, all the criminal revisions are dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The VII Metropolitan Magistrate,
George Town, Chennai.

+1 cc to M/s.Sivakumar & Suresh Advocate sr 67345
+20 cc to Mr.Prakash Goklaney Advocate sr 67203, 67200
67198,67199 67197,67196,67195,67194

Crl.R.C.Nos.672 to 681 of 2014

gmr (co)
aa15/10/2018