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.32130 of 2013 and
Crl.O.P.No.32503 of 2013
and
Crl.M.P.Nos.1 of 2013 and 2 of 2013

in Crl.O.P.No.32130 of 2013

1. Tarun Katial,
Chief Executive Officer,
Reliance Broadcast Network Ltd.
401, 4th floor, INFINITI Link Road,
Oshiwara, Andheri West,
Mumbai 400 053.

2. R.Asheesh Chatterjee,
Chief Financial Officer,
Reliance Broadcast Network Ltd.
401, 4th floor, INFINITI Link Road,
Oshiwara, Andheri West,
Mumbai 400 053.

3. Ashwin Padmanabhan,
Business Head-92, 7 BIG FM,
Reliance Broadcast Network Ltd.
401, 4th floor, INFINITI Link Road,
Oshiwara, Andheri West,
Mumbai 400 053.

4. Gururaja Rao,
Vice President (Legal) and Company Secretary,
Reliance Broadcast Network Ltd.
401, 4th floor, INFINITI Link Road,
Oshiwara, Andheri West,
Mumbai 400 053.

5. Kiran Thangarajan,
Station Head Chennai,
Reliance Broadcast Network Ltd.
152-153 Azam Arcade, Kodambakkam High Road,
Nungambakkam, Chennai 600 034.

.. Petitioners/Accused 2-7

6. Ms.Anooradha Unni

Vs.

R.Subramanian ... Respondent/Complainant

in Crl.O.P.No.32503 of 2013

Reliance Broadcast Network Ltd.
With its Registered Office at
401, 4th floor, INFINITI Link Road,
Oshiwara, Andheri West,
Mumbai 400 053.
and its Chennai office at
152-153 Azam Arcade, Kodambakkam High Road,
Nungambakkam, Chennai 600 034.
Represented by its
Chennai Branch Head Mr.Kiran Thangarajan
... Petitioner/1st Accused

Vs.

R.Subramanian ... Respondent/Complainant

Prayer in Crl.O.P.No.32130 of 2013 and Crl.O.P.No.32500 of 2013: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.5110 of 2013 on the file of V Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner/s in both WPs : M/s.B.Kumar Senior Counsel
M/s P.Meghana Nair

For Respondent in both WPs : M/s Prakash Goklaney

COMMON ORDER

These two petitions filed by M/s Reliance Broadcast network Limited and other officials of the same company are in the business of running and operating F.M.Radio station in the name and style of Big FM 92.7.

2. The respondent/complainant's main grievance against the petitioners is that he being the promoter and architect of M/s Subiksha retail Limited and having a very high reputation in the field of retailing with a chain of stores dealing with all

daily use items like groceries and others consumable articles and though he had no transactions whatsoever with the petitioner company, the petitioner company through their F.M. channel kept repeating an audio message claiming that a sum of Rs.41,06,513/- was due from M/s Subiksha Trading Services run by the complainant and also Rs.2,42,654/- due from blue green constructions and investment Limited which was the former name of M/s Subiksha Retail Limited. The allegation is that the F.M. stations run by the petitioner company, by making repeated audio broad cast in Tamil, had damaged the reputation of the complainant and his company thereby necessitating the complaint under Section 500 of the Indian Penal Code.

3. The petitioners on their side have stated that they were approached by the complainant's company to broadcast advertisements on behalf of their company and kept unpaid dues upto Rs.43.49 lakhs from the complainant's company and despite notices dated 21.2.200, 4.5.2009 and 7.6.2009, the complainant's company did not come forward to settle the dues and in the meanwhile it also came to light that there were many other creditors including financial institutions whose money got stuck due to the non payment by the complainant's company. Therefore, it was decided to go on air making it public about the dues and also warning the public not to deal with the said company and this broadcast message was no way defamatory, but contained only the facts and also was in public interest. The petitioner Big F.M. 92.7 had already filed C.P.173 of 2009 before this court praying for orders and directions to wind up the complainant's company namely M/s Subiksha Trading Services Limited and for appointment of a liquidator.

5. The complainant has not admitted that he had any sort of transactions with the petitioner company and consequently has denied the dues also. However, this matter is purely civil in nature and would be settled at the appropriate forum. In this context, it is pertinent to mention the observations made by this court in C.P.No.68 of 2009 dated 29.02.2012, wherein some observations were made, which are furnished below.

> 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.
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> .. 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 clear that the petitioner's company is one of those affected creditors. The contents of the broadcast message as such has not cast any aspersions on the complainant or his company. It appears to be only as a last resort for recovering the amount. Many of the established financial institutions resort to many against one (MAO) approach by which many officials of the institution approach the individual borrower demanding the repayment of dues, thereby exerting moral pressure on him to repay. SARFEASI Act intended for faster recovery of bank dues envisages publication of securitisation notice in newspaper and subsequent sale notice with all details of the borrowers and their properties, which in no way can be termed as defamatory. Only the petitioner company not being a financial institution has resorted to the method of broadcasting messages in which there were no personal allegations or accusations but only the message that this complaint owed the petitioner company payment of dues for the services rendered by him.

6. At this juncture, it is also relevant to extract the first exception of Section 499 of the Indian penal Code

First Exception - Imputation of truth which public good required to be made or published. - 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. 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 Crl.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 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, from the allegations made against the complainant, it is very clear that there was no malafide intention to cause harm to the reputation of the complainant and it was only intended to recover the dues from him. It is also pertinent to mention that the complainant has claimed that he had no transaction with the petitioners whatsoever, which is proved to the contrary that the advertisement on behalf of the complainant's company was aired by the petitioners' Big F.M.92.7 and the invoices were raised for the same.

8. In view of all the reasons stated by me and in view of the observations made in C.P.No.68 of 2009 dated 29.02.2012 and the fact that the complainant was arrested and remanded to judicial custody and also several criminal cases are filed against him, the proceedings in C.C.No.5110 of 2013 on the file of the V Metropolitan Magistrate, Egmore, Chennai is liable to be quashed.

9. In the result, the Criminal Original Petitions in Crl.O.P.No.32130 of 2013 and Crl.O.P.No.32503 of 2013 are allowed and the proceedings in C.C.No.5110 of 2013 on the file of the V Metropolitan Magistrate, Egmore, Chennai is quashed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The V Metropolitan Magistrate,
   Egmore, Chennai.

2. Do Thro The Chief Judicial Metropolitan Magistrate,
   Egmore, Chennai.

3. The Public Prosecutor,
   Madras High Court.

+2cc to Mr.P.Meghna Nair, Advocate SR.No.52073 & 52074

Crl.O.P.No.32130 of 2013 and
Crl.O.P.No.32503 of 2013

VGII(CO)
GN(20/08/2018)