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.25422 of 2012
Crl.O.P.No.25458 of 2012,
Crl.O.P.No.26906 of 2012,
Crl.O.P.No.26910 of 2012, and
Crl.O.P.No.31446 of 2012
and
Crl.M.P.Nos.1 of 2012 and 2, 3,4 of 2013

In Crl.O.P.No.25422 of 2012

1. ICICI Bank Limited,
ICICI Bank towers, Bandra Kurla Complex,
Mumbai 400 051.

2. S.Karthikeyan, s/o Sivaraman,
ICICI Bank Limited, ICICI Bank Towers,
4th floor West Wing, Plot No.24,
Ambattur Industrial Estate, Chennai 600 058.

.. Petitioners / Accused

Vs.

R.Subramanian

... Respondent /Complainant

In Crl.O.P.No.25458 of 2012

1. ICICI Bank Limited,
ICICI Bank towers, Bandra Kurla Complex,
Mumbai 400 051.

2. K.R.S.Varadhan, s/o K.V.Ramabhadran,
ICICI Bank Limited, ICICI Bank Towers,
4th floor West Wing, Plot No.24,
Ambattur Industrial Estate, Chennai 600 058.

.. :Petitioners/Accused

Vs.

R.Subramanian ... Respondent /Complainant

in Crl.O.P.No.26906 of 2012

Kotak Mahindra Bank,
36-38A, Nariman Bhavan,
227, Nariman Point, Mumbai 400 021.
Rep. by Authorized Signatory
V.Bhaskaran ... Petitioner /1st Accused

Vs.

R.Subramanian
... Respondent /Complainant

In Crl.O.P.No.26910 of 2012

V.Bhaskaran, s/o D.Veeraraghavan
office at Kotak Mahindra Bank,
Executive Vice President, 3rd floor,
Ceebros Centre, No.39, Montieth Road,
Chennai-8 ... Petitioner /2nd Accused

Vs.

R.Subramanian ... Respondent /Complainant

In Crl.O.P.No.31446 of 2012

1. The Hong Kong and Shangai Banking Corporation (HSBC).
Re. by its Chief Executive Mr.Stuart A Davis,
52/60 MG Road, Fort, Mumbai 400 001.

2. Neeraj Datt Upadhayay, s/o R.D.Upadhayay,
Vice President, The Hong Kong and Shanghai Banking Corporation (HSBC),
Nagabrahma Towers, 76, Cathedral Road,
Chennai 600 086.
... Petitioners /Accused 1 & 2

Vs.

R.Subramanian
... Respondent / Complainant

Prayer in Crl.O.P.No.25422 of 2012: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2992 of 2012 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

Prayer in Crl.O.P.No.25458 of 2012: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2989 of 2012 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

Prayer in Crl.O.P.No.26906 of 2012 and Crl.O.P.No.26910 of 2012 : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2991 of 2012 on the file of the ***XIV** Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

Prayer in Crl.O.P.No.31446 of 2012: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2990 of 2012 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioners in Crl.O.P.No.25422 of 2012
Crl.O.P.No.25458 of 2012 : Mr.V.Suresh
for M/s Shivakumar

For Petitioner in Crl.O.P.No.26906 of 2012
Crl.O.P.No.26910 of 2012 : Mr.H.Karthik Sheshadri
for M/s Iyer and Thomas

For petitioner in Crl.O.P.No.31446 of 2012
:Mr.S.Ashok Kumar
for M/s A.Sasidharan

For Respondent in all petitions : M/s Prakash Goklaney

COMMON ORDER

Out of 5 petitions, first two have been filed by ICICI Bank, the third one by HSBC Bank and the last two by Kotak Mahindra Bank and their representatives. All these petitions have been filed for quashing the criminal complaints made by the same complainant one Mr.R.Subramanian. All the five petitioners are creditors of the complainant and his company and all the complaints pertain to the averments made by them before the Debts Recovery Tribunal during the course of the proceedings of Original Applications.

2. According to the complainant, the contents of the affidavit filed in the D.R.T were intended to cause harm to the reputation of the complainant and also his company as the complainant Mr.Subramanian has to his credit elite academic qualifications and his company was founded as the pioneer of retailing with a chain of stores across the country. The complainant has claimed that the averments made by the petitioners are serious in nature and do not carry any truth in it. The averments made by the petitioners ICICI Bank and its representatives before the Debts Recovery Tribunal (in Crl.O.P.No.25422 of 2012 and Crl.O.P.No.25458 of 2012) are as given below.

> I state that the Registrar of Companies Chennai has looked into the books of the first respondent from 2007 onwards under Section 209(A) of the Companies Act. During the course of investigation, it was found that the promoters of the first respondent company had floated about 100 shell companies and they had the proof of fund-siphoning and falsification of accounts. Based on the said investigation report, the Ministry of Company Affairs has directed the Serious Fraud Investigation Officer (SFIO) to probe into the books of the first respondent company. The petitioner has received a letter dated 09.08.2010 issued by the Serious Fraud Investigation Office, wherein the requested (sic) to provide the details of the first defendant company.
> ... The Annual return filed by the said company with the ROC is available in the website of the Registrar of Companies confirms (sic) that the Luckyview Home Finance Limited is one of the shareholders of the fourth respondent. It is evident from the SFIO letter, the second defendant is one of the Directors of the said company. Therefore, it is evident that the second defendant is controlling the third to fifth respondents herein who are claiming themselves as Franchisees of the brand SUBHIKSHA. Admittedly, the first and second respondents are carrying on business in the name of the third to fifth respondents inspite of the said interim order passed by this Hon'ble Tribunal.... This would further strengthen the case of the petitioner that the first defendant and the second defendant are only carrying on the business in the name of the third to fifth defendants.

3. According to the complainant, the averments basically revolve around the investigation conducted by the Registrar of

Companies under Section209(A) of the Companies Act, 1956 and consequent findings thereon, which have been exaggerated and intended only to defame him (the complaint) and his company.

4. Similarly, in the case of Crl.O.P.Nos.26906 of 2012, 26910 of 2012, the petitioners Kotak Mahindra Bank and its representatives have averred in their Original Application No.52 of 2009 before the Debts Recovery Tribunal, Chennai, that

> The Applicant apprehends that the 1st and 2nd respondent have perpetrated a scam on the lines of the "Satyam Scam". The applicant believes that the 2nd respondent being the "master puppeteer"has adopted a very clever scheme and has siphoned off huge amounts of monies to the accounts of various other companies such as cash and carry Wholesale Traders private Limited, Custodial Services India Pvt. Ltd., Pentagon Trading Services Pvt. Ltd., Shevaroy Holiday Resorts Pvt. Ltd. Triad Trading Services Pvt. Ltd. etc. (hereinafter referred to as "Associate entities"). These Associate entities are nothing but an alter ego of the 2nd respondent and are totally controlled by him. The directors/ shareholders of these associate entities are the persons working in association with the 2nd respondent and have been put up merely as dummy/directors shareholders while the actual control of these associate entities is retained with the 2nd respondent. The Associate entities are nothing but the 2nd respondent in a different garb. The funds of the 1st respondent have been systematically siphoned off to these associate entities. The 2nd respondent has manipulated the entire proceedings in such a manner that the other members of the Board of Directors of the 1st respondent as well as the shareholder of the 1st respondent apart from the 2nd respondent also are not aware of the goings on in the 1st respondent. The 2nd respondent admittedly owns/control 59% of the shareholding. "

wherein it has been claimed that the happenings in the complainant's company was very much within the knowledge of the complainant, especially, when the complainant was holding 59% of the shares in the company.

5. In the petition in Crl.O.P.No.31446 of 2012 filed by the HSBC Bank, and its representative, the affidavit in Original Application No.52 of 2009 before the Debts Recovery Tribunal, reads as follow.

> Further during the course of dealings, the applicant bank found disappearance of monies of the respondents in a suspicious fashion. Now, it has come to the Applicant Bank's knowledge that the respondent herein had set up a Trust namely Srividhya Trust by way of gift deed dated July 15,2002 towards which there have been some suspicious diversion of funds from the respondent herein. By virtue of this gift deed, Mrs. S.Srividhya, who is the wife of the 2nd respondent herein, transferred control in 13 sister concerns. These companies from the Corpus of the Trust and the proceeds from such companies are to be used for the normal objects of the trust namely for the benefit of Mrs.Srividhya and her children. The creation of the Trust seems to be for the sole purpose of diversion of funds and to defraud the creditors.
>
> ... As a custodian of public monies, the applicant bank is entitled to follow the funds wherever the respondents herein clandestinely attempt to remove it.
>
> Since there is a bonafide suspicion that the trust is being used as a cloak for diversion of funds, it is necessary that the Trust be made a party to these proceedings.

The contents of this affidavit was more specific mentioning the name of a Trust by name Srividhya Trust suspected to be involved in the diversion of funds from the complainant's company. This again according to the complainant is false and intended to defame him and his company and therefore, he filed a compliant in C.C.No.2991 of 2012 on the file of the XVIII Metropolitan Magistrate, Egmore, Chennai.

6. At this juncture, it is relevant to extract the the observations made by this court in C.P.No.68 of 2009 dated 29.02.2012, which read thus.

> 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. "

7. It is also pertinent to point out the observations made in Priyanka Srivastava and another Vs. State of Uttar Pradesh and others reported in (2015) 6 Supreme Court Cases 293, which are given below.

The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the court, as if, it is a laboratory where multifarious experiments can take place and such skilful persons can adroitly abuse the process of the court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal case, ..."

8. All the complaints made by the complainant in the bunch of petitions before D.R.T. have one thing in common. All the accused in the various complaints are creditors of the complainant and original civil suits for recovery of the money

owed to them by the complainant is the subject matter and the creditors/petitioners (herein) have been accused of making defamatory remarks in the original application filed by them in the respective money suits. Section 499 of the Indian Penal Code, which pertains to the defamation and the various ingredients which could be considered as defamation clearly spells out 10 exceptions out of which the VIII exception is very much relevant in the instant bunch of petitions. The VIII exception of Section 499 of the Indian Penal Code reads as follow.

> Eighth Exception- Accusation preferred in good faith to authorized persons - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Accordingly, it is evident that the averments of a creditor in a money suit cannot be one complimenting the debtor. The mere fact that the complainant had defaulted in repayment of the loan obtained from various creditor will go to show that he lacks financial discipline. If the accusation of financial discipline is made by a creditor before the court of law in order to recover the dues from the debtor, it cannot be construed as a bid to defame the debtor even by the wildest of imagination. Moreover, any accusation or averment made in the civil suit has necessarily to be proved by the plaintiff and in the event of inability to prove the same, the case is disposed of accordingly. Therefore, any averment which is relevant to the facts of the case, cannot be termed as defamatory just because the averment speaks about the acts of the respondent.

9. In the backdrop, the decisions relied on by Mr.Prakash Goklaney, learned counsel appearing for the respondent 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

> [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 an element of good faith in the allegations made out by the petitioners.

[ii] It cannot also be said that it is too premature to conclude that averments were made in good faith in the instant case for the simple reason that the petitioners are creditors and in their effort to recover the dues through legal means, had every right to state about the health of the company.

Hence, for all the reasons stated above, the proceedings in C.C.No.2992 of 2012, C.C.No.2989 of 2012, C.C.No. 2991 of 2012 and C.C.No.2990 of 2012 on the file of the ***XIV** Metropolitan Magistrate, Egmore, Chennai is liable to be quashed.

10. In the result, the Criminal Original Petitions in Crl.O.P.No.25422 of 2012, Crl.O.P.No.25458 of 2012, Crl.O.P.No.26906 of 2012, Crl.O.P.No.26910 of 2012 and Crl.O.P.No.31446 of 2013 are allowed and the proceedings in C.C.No.2992 of 2012, C.C.No.2989 of 2012, C.C.No. 2990 of 2012 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai and C.C.No.2991 of 2012 on the file of the ***XIV** Metropolitan Magistrate, Egmore, Chennai are quashed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)
dated:10/08/2018

*Corrected as per order of this Court
dt.25.9.2018 in Crl.OP.Nos.26906 & 26910/2012
dt.9.10.2018

//True Copy//

Sub Assistant Registrar

mst

To

1. The XIV Metropolitan Magistrate,
   Egmore, Chennai.

2. The XVIII Metropolitan Magistrate,
   Egmore, Chennai

To be substituted to the order already despatched on 5.9.2018

3. The Public Prosecutor,
Madras High Court.

+2cc to Mr.H.Karthik Sheshadri , Advocate, S.R.No.67293

+1cc to Mr.A.Sasidharan, Advocate, S.R.No.51769

+2cc to Mr.S.ShivaKumar & Suresh, Advocate, S.R.No.52283 & 52284

Crl.O.P.No.25422 of 2012,
Crl.O.P.No.25458 of 2012,
Crl.O.P.No.26906 of 2012,
Crl.O.P.No.26910 of 2012 and
Crl.O.P.No.31446 of 2012

NMI(CO)
GSP(11/08/2018)
sm:9.10.2018