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.28968 of 2012,
Crl.O.P.No.28969 of 2012,
Crl.O.P.No.28970 of 2012,
Crl.O.P.No.30688 of 2012,
Crl.O.P.No.416 of 2013 and
Crl.O.P.No.19395 of 2013
and
Crl.M.P.Nos.1, 2, 3 of 2012 and
Crl.M.P.Nos.1, 2,3 of 2013

Ms.Renuka Ramnath ... Petitioner in Crl.O.P.No.28968 of 2012,
Crl.O.P.No.28969 of 2012 and
Crl.O.P.No.28970 of 2012

ICICI Venture Funds Management Company Ltd.
a company incorporated under the Companies Act
having its registered office at "ICICI Venture House"
Ground Floor, Appa Saheb Marathe Marg,
Prabhadevi, Mumbai 400 051, Maharashtra,India

... Petitioner in Crl.O.P.No.416 of 2013

Mr.Rajeev Bakshi ... Petitioner in Crl.O.P.No.30688 of 2012
and Crl.O.P.No.19395 of 2013

Vs.

R.Subramanian ... Respondent in all petitions

Prayer in Crl.O.P.No.28968 of 2012 and Crl.O.P.No.30688 of 2012: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2985 of 2012 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

Prayer in Crl.O.P.No.28969 of 2012 : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in

C.C.No.2986 of 2012 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

Prayer in Crl.O.P.No.28970 of 2012 and Crl.O.P.No.416 of 2013: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2987 of 2012 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

Prayer in Crl.O.P.No.19395 of 2013 : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.2988 of 2012 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner in all petitions : Mr.Krishna Srinivasan
for M/s S. Ramasubramaniam
and Associates

For Respondent in all petitions : M/s Prakash Goklaney

COMMON ORDER

The batch of criminal original petitions have been filed seeking quashing of the proceedings in C.C.No.2985 of 2012, 2986 of 2012, 2987 of 2012 and 2988 of 2012 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai.

2. This batch of petitions have been filed by the ICICI Venture Funds Management Company Limited and its two non executive external nominee Directors.

3. The petitioner's company is a private Equity and Asset Management Company managing funds in excess of 2 Billion US dollars. They also have stake in the company floated by the complainant. According to the respondent/complainant, who has filed the criminal complaints under Section 200 of the Code of Criminal Procedure against the petitioners in C.C.No.2985 of 2012, 2986 of 2012, 2987 of 2012 and 2988 of 2012 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai for the offence punishable under Section 500 of the Indian Penal Code, the petitioners company had made false averment's with ulterior motive and malice in the representation dated 27.01.2009 and 29.01.2009 to the Registrar of Companies, Commissioner of Provident Fund, Chief Commissioner of Income Tax, Director General of Service Tax and Employees State Insurance Corporation and Regional Director, Ministry of Corporation affairs, Southern Region, Chennai which was defamatory and causing damage to the complainant's reputation'. The other two petitioners were also

implicated, since they were nominee directors of the company till September 2009. According to the complainant, his company Subiksha Trading Services Limited was a pioneer in organised retailing, catering to the middle class by offering day to day use items at a lesser price than other retailers. Being the promoter and the key architect of Subiksha Trading Services Limited, he himself had excellent academics to his credit and also his company was enjoying a very high reputation in the market and therefore, the contents of the representation made by the petitioner company to the Registrar of Companies, Chenni were all with malafide intentions to tarnish the reputation and image of the complainant and his company.

4. In the representation dated 29.01.2009, addressed to the Registrar of Companies, Chennai, the following were observed by the petitioner company, which according to the complainant are defamatory in nature.

> XIII The MD reluctantly participated in the Board meeting held on 22nd November 2008 ... The representations of the MD have been recorded in the minutes of the meeting presided by the Chairperson, Ms. Rama Bijapurkar. Some of the issues discussed in the meeting are as under:
>
> a. An appointment f Mr.Rajeev Bakshi as a nominee director of the investors was avoided by the MD
>
> b. The MD failed to even place before the Board the minutes of the last Board meeting for confirmation.
>
> c. The MD failed to furnish financial statement, audited/unaudited before the Board.
>
> d. The MD failed to furnish the Compliance Certificate certifying compliance of various statutory rules and regulations
>
> e. No information was furnished by the MD on the current assets, current liabilities and the inventories of the company.
>
> f. Shocking news was given by the MD of receiving a winding up notice from one of the suppliers, 150-200 notices for recovery of outstanding dues served upon the company.
>
> g. Non financing dues aggregating to Rs.125 crores payable by the company.
>
> h. The MD requested raising of Rs.1000 crores for financing the business plans.
>
> i. The MD used the working capital of the company for diversification without the knowledge of the Board.
>
> j. Admission of overdue wages and unpaid salaries running into crores of rupees by the MD.

k. Clear admission by the MD that the cash cycle in the company was breaking in or around February 2008.

l. Unexplained growth in the pilferage rate of approximately 4.5% of total sales as against company's earlier estimate of 0.68%.

The petitioners have contended that the essence of the offence of defamatory was not made out in the complaint and with a financial stake held by the petitioner company in the complainant's company and the latter showing no signs of recovery, the representation was absolutely essential and it only depicted the pathetic state of affairs of how unprofessional company was being conducted and also intended to make the authorities aware of the goings on in the company. In fact, based on the representation of the petitioners dated 27.01.2009 to the Regional Director, Ministry of Corporate Affairs, Government of India, the concerned authorities took cognizance of the representation and issued notice under Section 209(A) of the Companies Act, 1956 to the complainant's company, thereby vindicating the stand of the petitioners that there was no malice intended.

5. In this context, the report submitted by the Regional Director, Ministry of Corporation Affairs, Government of India has pointed out, after inspection under Section 209(A) of the Companies Act, 1956, many violations made by the complainant's company, some of them grave in nature. It is also relevant to refer the order of this court in C.P.No.68 of 2009 dated 29.02.2012

> 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 availabe 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.

These observations in nutshell reflected the dismal state of affairs of the company then. Subsequently, the complainant himself was not only arrested but his company also was wound up and with all the creditors liability left in lurch. Therefore, the contentions of the complainant against the petitioners fail.

6. The provision of Section 499 of the Indian Penal Code will not attract in the instant case for the following reasons.

a. The observations made in the representation turned out to be true, when based on the observation, a preliminary enquiry was made into the affairs of the complainant's company and many serious violations were detected.

b. The subsequent turn of events of closing down of all the retail outlet and winding up of the company itself goes only to prove that no false allegations were made by the petitioners.

c. The arrest of the complainant and the series of criminal proceedings against him have already demolished his reputation and therefore, claiming that the observations in the representation was the only cause for any disrepute appears to be unacceptable.

d. Exception No.8 of Section 499 of the Indian Penal Code, directly applies to the case wherein the representation by the petitioner company was addressed only to those persons, who have lawful authority over the complainant's company with respect to the subject matter of the accusation.

7. Mr.Prakash Goklaney, learned counsel appearing for the respondent company relied on the decisions 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). These rulings 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 out by the petitioners.
>
> [ii] The well settled principle of law is that those who plead exception to Section 499 of the Indian Penal Code, must prove it. In the present case, it is abundantly clear that the investigation initiated by the Regional Director, Ministry of Affairs, Government of India, under Section 209 of the Companies Act, 1956 and his report detected many serious violations substantiating the contents of the representation made by the petitioners herein.
>
> [iii] 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 petitioner company had stake 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, and they had only performed the duties as external nominee directors. Hence for all the reasons stated above, all the proceedings in C.C.No.2985 of 2012, C.C.No.2986 of 2012, C.C.No. 2987 of 2012 and C.C.No.2988 of 2012 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai are liable to be quashed.

8. In the result, the Criminal Original Petitions in Crl.O.P.No.28968 of 2012, Crl.O.P.No.28969 of 2012,

Crl.O.P.No.28970 of 2012, Crl.O.P.No.30688 of 2012, Crl.O.P.No.416 of 2013 and Crl.O.P.No.19395 of 2013 are allowed and the proceedings in C.C.No.2985 of 2012, C.C.No.2986 of 2012, C.C.No. 2987 of 2012 and C.C.No.2988 of 2012 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai are quashed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

1. The XIV Metropolitan Magistrate,
   Egmore, Chennai.

2. The Public Prosecutor,
   Madras High Court.

+3cc to M/s S. Ramasubramaniam and Associates sr.no.52575 to 52577

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nr 27/08/2018