

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment reserved on : 14<sup>th</sup> March, 2018

Judgment delivered on: 02<sup>nd</sup> July, 2018

+ **CRL.M.C.2606/2014**

SUBHASH MOTWANI & ANR.

..... Petitioners

versus

FRANK FINN MANAGEMENT  
CONSULTANTS & ANR.

....

Respondents

**Advocates who appeared in this case:**

For the Petitioners : Mr Ashok Gurnani

For the Respondents : Mr Vikas Pahwa, Senior Advocate with Ms Meenakshi Midha, Mr Kapil Midha, Ms Abhivamdana Chowdhury, Mr Shadman Siddiqui, Ms Aashita Khanna and Ms Bhawya Srivastava for R-1.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J.**

**CRL.M.C.2606/2014 & Crl.M.A.8738/2014(stay)**

1. The petitioners seek setting aside of order dated 31.03.2014 of the Revisional Court whereby the Revisional Court has dismissed the Revision Petition impugning the order dated 28.08.2012 of the Trial Court. The petitioners also seek discharge in the complaint case and further seek quashing of the complaint case filed by respondent No.1.
2. Respondent No.1 - Frank Finn Management Consultants is a

Company engaged in Basic Cabin Crew Training and providing job assistance to its trainees. It filed a complaint alleging that the petitioners started a similar training course in the name and style of M/s. Institute of Hotel Cargo and Tourism Management (IHCTM), wherein petitioner No.1 is a Director. It is alleged that petitioners were also editors and publishers of a Journal/Magazine known as “Opportunities Today”.

3. In September, 2001, in the issue of the said Journal, an Article under the Title “*Flight of Fancy Crash Courses of Crashing Hopes*” was published, which made several incorrect statements about the respondent No.1/complainant. Said Article was also published on the Internet through the website of the petitioners. It was alleged that though in the said Article, complainant was not named, suggestions in the Article clearly referred to the complainant. It was alleged that the Article was defamatory and intended to harm the reputation of the complainant/respondent No.1.

4. Respondent No.1 issued a legal notice requiring the petitioners to tender an unconditional apology and to compensate the complainant, however the notice was not complied with. Respondent No.1, apart from filing a civil suit for the alleged act of defamation had also filed the subject criminal complaint against the petitioners.

5. After recording of the pre-summoning evidence by order dated 27.06.2005 (summoning order), the Trial Court came to a conclusion

that a *prima facie* case for an offence of criminal defamation punishable under Section 500 of the Indian Penal Code (IPC) was made out and accordingly, summoned the petitioners for facing trial.

6. Petitioners filed a petition being CrI.M.C. No.2322/2006, under Section 482 of the Code of Criminal Procedure (Cr.P.C.) challenging the summoning order and seeking quashing of the complaint.

7. By a detailed judgment dated 27.02.2008, the Criminal Miscellaneous Petition (CrI.M.C. No.2322/2006) was dismissed. This Court, by judgment dated 27.02.2008, noticed that simultaneous progression of criminal proceedings with a civil suit has been accepted as a legitimate course available to an aggrieved person seeking to invoke criminal and civil remedies, which are separate and distinct.

8. Subsequently, by a detailed judgment dated 12.09.2008, the civil suit filed by respondent No.1 was dismissed.

9. On 07.09.2009, notice under Section 251 of the Code of Criminal Procedure (Cr.P.C.) was framed against the petitioners in the subject criminal proceedings. The petitioners thereafter once again approached this Court by filing another petition under Section 482 Cr.P.C. (Cr.M.C.3686/2009) impugning the framing of notice as well as the summoning order.

10. By a detailed judgment dated 07.03.2012, the petition filed by

the petitioners (Crl.M.C.No.3686/2009) was dismissed. This Court in judgment dated 07.03.2012 noticed that the civil suit had been dismissed, however, observed that in the judgment dismissing the civil suit, the learned Judge had noticed that portions of the Article referred to in the Judgment were defamatory and the Civil Court had not recorded any findings of fact that the Article was not defamatory.

11. The petitioners impugned judgment dated 07.03.2012 passed in Crl.M.C.3686/2009, before the Supreme Court by filing a Special Leave Petition, however, the petitioners on 10.05.2012 before the Supreme Court sought leave to withdraw the Special Leave Petition with liberty to approach the Metropolitan Magistrate for relief. The Special Leave Petition was dismissed as withdrawn.

12. Thereafter, petitioners filed the subject application under Section 245 of the Cr.P.C. before the Trial Court seeking discharge. Said application has been dismissed by the impugned order dated 28.08.2012. The Trial Court, in the impugned order dated 28.08.2012, has noticed the fact that the Trial Court took cognizance of the offence after the pre-summoning evidence was led and passed summoning order dated 27.06.2005 and the challenge to the summoning order had failed before the High Court.

13. The Trial Court was of the view that Section 245 Cr.P.C. was applicable only to a Warrants triable case and not to a Summons triable case, as was the present situation. Trial Court was further of the

view that the High Court twice having rejected the petition filed by the petitioners had no power to override the decisions of the High Court, more so, when the said order of the High Court had not been interfered with by the Supreme Court. The only remedy available to the petitioners, as per the Trial Court, was to seek acquittal after the prosecution evidence is recorded and the Court finds that no case is made out against the accused person.

14. Revisional Court, by the impugned judgment dated 31.03.2014, declined to interfere with the order of the Trial Court. The Revisional Court is of the view that the High Court, in the earlier rounds, had duly taken into consideration the issue relating to pendency of the civil suit and the subsequent disposal of the same and thereafter dismissed the two Revision Petitions.

15. The order of the Supreme Court clearly records that the Supreme Court has not expressed any opinion on the merits of the case.

16. Before this Court, it is conceded by learned counsel for the petitioners that Section 245 Cr.P.C. is not applicable to a Summons triable case and is applicable only to a Warrants triable case. The only argument put forth by the learned counsel for the petitioner is that the application under section 245 would lie as liberty was granted by the Supreme Court to seek appropriate remedy before the Trial Court.

17. It may be expedient to refer the order of the Supreme Court,

which is relied on by the petitioners. The order dated 10.05.2012 reads as under:-

*“Learned counsel for the petitioners seeks permission to withdraw the Special Leave Petition with liberty to approach the Metropolitan Magistrate for appropriate relief. Permission is granted. It is made clear that we have not expressed any opinion on the merits of the proposed claim. The Special Leave Petition is dismissed as withdrawn.”*

18. Perusal of the order of the Supreme Court shows that the petitioners had sought leave to withdraw the petition impugning the judgment dated 07.03.2012 of this Court rejecting the challenge by the petitioner to the summoning order as well as the framing of notice under Section 251 Cr.P.C. Supreme Court has not expressed any opinion on merits of the claim of the petitioners.

19. The other ground taken by the learned counsel for the petitioners is with regard to dismissal of the civil suit.

20. It may be expedient to refer to the judgment of this Court dismissing the civil suit. In the Civil Suit, one of the issues framed, is as under:-

*“3. Whether the Article “Flight of Fancy Crash Courses of Crashing Hopes” published by the defendants in the Magazine “Opportunities Today” was a defamatory Article and if so, whether the same was defamatory to the plaintiff’s reputation? OPP.”*

21. The answer to Issue No.3, as recorded in paragraph 32 of the said judgment dismissing the Civil Suit is as under:-

*“I thus answer issue No.3 as under:-*

*‘That the portions of the Article culled out above are per se defamatory but the plaintiff has failed to prove that the same are defamatory to the plaintiff’s reputation.’”*

22. This Court, by its order dated 07.03.2012, while rejecting the challenge to the notice framing charge and the summoning order, with regard to the issue of defamation, observed as under:-

*“Though it would not be desirable to comment upon the findings of the Civil Court as regard to whether the Article in question was held to be defamatory or not but from para 28, 29, 30 & 32 of the said judgment, it can be prima facie seen that the portions of the Articles referred to in the judgment are per se observed to be defamatory. This was in fact a triable issue as to whether the article was defamatory to the plaintiff’s reputation or not. However, it cannot be said that the Civil Court recorded finding of the fact that the Article was not at all defamatory.*

23. The petitioners have twice earlier failed in their attempt to thwart the criminal proceedings initiated by respondent No.1. This present petition is once again an attempt on behalf of the petitioners to derail the criminal proceedings.

24. It is a settled proposition of law that *findings of fact recorded by the civil court do not have any bearing so far as the criminal case*

*is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases, it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.*<sup>1</sup>

25. It may further be noticed that when the petitioners had earlier approached the Supreme Court impugning the judgment dated 07.03.2012, the judgment of the Civil Court rejecting the suit of the respondent No.1/complainant was already available. Despite the said judgment dismissing the Civil Suit, the Supreme Court did not interfere with the findings of this Court dismissing the petition filed by the petitioners.

26. Perusal of the order of the Supreme Court dated 10.05.2012 does not show that the petitioner was given any liberty to once again agitate the issue which had been decided twice over by this Court by dismissal of the earlier two petitions filed by the petitioners.

---

<sup>1</sup> **Kishan Singh (D) Through LRs versus Gurpal Singh & Others : 2010 (8) SCC 775**

27. Reliance placed by learned counsel for the petitioner on the judgments of the supreme court in *Radheshyam Kejriwal versus State of West Bengal*, (2011) 3 SCC 581, *Videocon Industries Limited versus State of Maharashtra*, 2016 (12) SCC 315 = AIR 2016 SC 2843 and *Ravinder Singh versus Sukhbir Singh*, (2013) 9 SCC 245 is misplaced. Said judgments are not applicable to the facts of the present case.

28. In *Radheshyam Kejriwal (supra)* the petitioner was sought to be prosecuted for payment of foreign exchange in contravention of the Foreign Exchange Regulation Act. The issue was with regard to criminal prosecution, which was sought to be initiated by the enforcement directorate after the petitioner was exonerated in the adjudication proceedings. The Supreme Court noticed that the adjudicating officer had himself noted that payment of foreign exchange had not been established and contravention of provisions of FERA were not sustainable. The Enforcement Directorate had not challenged the order of the adjudicating officer. In the present case there is no finding that the article is not at all defamatory. Similarly in *Videocon Industries Limited (supra)* the Supreme Court quashed the proceedings as the Revenue department had not challenged the order passed by the Tribunal in the adjudication proceedings. The judgment is based on a finding in the adjudication proceeding that there is no contravention of any of the provisions of the Act. As noticed above in the Civil Suit there is no finding of fact that there is no defamation at

all. In *Ravinder Singh (supra)* the issue was with regard to issue estoppel between two criminal trials and double jeopardy, which is not the case at hand.

29. Keeping in view the totality of the facts and circumstances, as noticed hereinabove, I do not find any reason to interfere with the impugned orders and find no infirmity in the same. The petition is accordingly dismissed.

30. Since the petitioners have once again tried to agitate the issue, which has been settled twice over against the petitioners, the present petition is dismissed with costs quantified at Rs.25,000/-.

31. It is clarified that no observations in this order shall come in the way of the Trial Court at the time of forming the opinion upon an independent assessment of the evidence that comes on record at the stage of final judgment.

**SANJEEV SACHDEVA, J**

**July 02, 2018**

**'Sp'**