

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 09.05.2019

Order Passed on : 03/07/2019

CR.M.P. No. 2401 of 2018

Kuldeep Kumar Dhar, S/o. Late Shri M.N. Dhar, Aged About 63 Years, R/o. D.G.M. Business Development, M/s. Goyal M.G. Gases Pvt. Limited, 53 Friends Colony (East), New Delhi, 110065.

---- Petitioner

Versus

M/s. Ind Synergy Ltd., Through- Its Authorized Signatory, Satyadeep Sahukar, S/o. S.N. Sahukar, Aged About 52 Years, Director-Ind Synergy Ltd. Registered Office Gokulpuram, Kachna Road, Khamhardih, Shankar Nagar, Raipur, Chhattisgarh. Corporate Office-Lotus Court, Behind V.C.A. Standim, Gate No. 2, Civil Line, Nagpur (Maharashtra) Pin-440001.

-----Respondent

CR.M.P. No. 2402 of 2018

Suresh Chandra Goyal, S/o. Late Ratan Lal Goyal, Aged About 72 Years, Through Chairman- Cum- Managing Director, M/s. Goyal MG Gases Pvt. Ltd., 53 Registered Office- Friends Colony (East), New Dehli, Pin- 110065.

---- Petitioner

Versus

M/s. Ind Synergy Ltd., Through- Its Authorized Signatory, Satyadeep Sahukar, S/o. S.N. Sahukar, Aged About 52 Years, Director-Ind Synergy Ltd. Registered Office Gokulpuram, Kachna Road, Khamhardih, Shankar Nagar, Raipur, Chhattisgarh. Corporate Office-Lotus Court, Behind V.C.A. Standim, Gate No. 2, Civil Line, Nagpur (Maharashtra) Pin-440001.

-----Respondent

&

M.C.C. No. 876 of 2018

Kuldeep Kumar Dhar, S/o. Shri M.N. Dhar, aged about 63 years, Business Development Manager, M/s. Goyal M.G. Gases Pvt. Ltd., 53 Friends Colony (East.), New Delhi.

---- Petitioner

Versus

1. M/s. Ind Synergy Ltd., Through - Its Authorized Signatory, Village – Kotmar (Mahupali), Gharghoda Road, Raigarh (C.G.) 496001.
2. Suresh Chand Goyal, S/o. Late Ratanlal Goyal, aged about 72 years, General Director, M/s. Goyal M.G. Gases Pvt. Ltd., Registered Office at – 53, Friends Colony (East), New Delhi – 110065.

-----Respondents

For petitioners : Mr. Abhisek Sinha, Advocate with
Mr. Goutam Khetrapal, Advocate

For Respondent : Mr. Ashish Surana with Mr. Harshwardhan
Parghania, Advocates

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

03/07/2019

1. Petition under Section 482 of Cr.P.C. has been brought by the petitioners in both the cases praying for relief for quashment and discharge of the petitioners in Criminal Complaint Case No.32/2015 titled as M/s. IND Syngry Ltd. Vs. S.C. Goyal & Ors., pending before the Court of Chief Judicial Magistrate, Bilaspur (C.G.).

2. Complaint has been filed by the respondent against the petitioners alleging that the petitioners in both the cases have representing their concerns, have made defamatory statements against the respondent in the arbitration proceedings on the basis of which, the Court of learned C.J.M., Bilaspur has framed charges under Section 500 and 501 of the Indian Penal Code by order dated 25.04.2018. The said order was challenged before the Court of Sessions Judge, Bilaspur, whereby by order dated 06.10.2018, the learned Sessions Judge has dismissed the revision petition.
3. It is submitted by the learned counsel for the petitioners in both the cases that the petitioners and the respondent had business relation between them. On the basis of one agreement dated 30.05.2008 (P-10) regarding supply of Oxygen and Nitrogen gases by the company of the petitioners, a dispute arose between them. Then on behalf of the respondent, one FIR (Annexure P-11) was lodged against Sureshchand Goyal and others by respondent on 28.07.2010. Subsequent to that respondent also filed an application under Section 9 of Arbitration & Conciliation Act, 1996 (hereinafter referred as the "Act of 1996") before the Court of learned District Judge, Raipur, which was dismissed by order dated 04.07.2011 (Annexure P-12). The rejection of this application was challenged before the High Court in Arbitration Appeal No.66/2011. The Division Bench of this High Court disposed off the arbitration appeal with an observation that

parties have liberty to approach the arbitration tribunal for claiming interim measures as contemplated under Section 17 of the Act of 1996.

4. Both the parties then referred the dispute for arbitration. Sole arbitrator Hon'ble Mr. Vijay Kumar Shrivastava was appointed to arbitrate the dispute. Claimants M/s. Goyal MG Gases Pvt. Ltd. filed an application under Section 17 of the Act of 1996, praying for interim relief. The same was rejected vide order dated 18.05.2013 (Annexure P-14). This order of sole arbitrator was challenged before the District Judge, which was again rejected and thereafter a Civil Revision No. 164/2013 was filed before the Hon'ble High Court, which has also been rejected vide order dated 04.12.2017 (Annexure P-15).
5. The FIR lodged by the respondent has been quashed by this Court in W.P.(Cr.) No.1181, 1360, 2916 of 2011 and Cr.M.P. No. 764 of 2010 by order dated 01.05.2015. A writ appeal was filed by the respondent against the order of Single Bench of this Court and the same has been rejected by the Division Bench on 03.05.2017. The respondent then filed SLP before the Supreme Court, but the same was dismissed as withdrawn.
6. It is submitted that after all these exercise, the respondent then resorted to file private complaint, in which, it is alleged that on behalf of the company of the petitioners, reply was submitted before the learned arbitrator containing defamatory statement in

Para-7 of the reply. Similarly, it is alleged that an affidavit has been filed on the instruction of the Suresh Chandra Goyal (petitioner) in which defamatory statement has been again made against the respondent. It is submitted that the statement made by the representative of the Goyal Gases in the arbitration proceeding is a true statement. Vide Annexure P-8, All India Bank Employees' Association has published a list of bad loan accounts, which includes the respondent in serial no.127, showing it as debtor of Bank of Maharashtra, Indian Overseas Bank, Dena Bank, Oriental Bank of Commerce and UCO Bank. It is on the basis of that and on the basis of other publications, the petitioners have presented the reply with pleading before the arbitrator, therefore, it is not their own statement. Therefore, the charges framed against the petitioners is misconceived. Similarly the observation made by the revisional Court, is also contradictory and uncalled for.

7. It is further submitted that according to the definition of the defamation under Section 499 of the Indian Penal Code, first exception is applicable here, which says that to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published is not defamation. In 9th exception, it is provided that it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for

the public good. Therefore, no case is made out against these petitioners.

8. Reliance has been placed by the counsel for the petitioners on the judgment of Karnataka High Court in ***Mehaboobkhadri Vs. Sri Abdul Rashid & Ors., Criminal Petition No.16100/2012, decided on 5th February, 2015***, in which it is held that unless the civil Court after appreciation of the entire case comes to the conclusion that the said allegations made are false, till that point of time there cannot be any prosecution of defamation against the petitioner. It is submitted that Full Bench of Kerla High Court has in ***Thekkittil Gopalankutty Nair Vs. Melepurath Sankunni Ezhuthaseah***, reported in ***MANU/KE/0064/1971*** has held that maker of statements in judicial proceedings are entitled to absolute privilege. Reliance has also been placed on the judgment of Delhi High Court in ***Raminder Kaur Bedi Vs. Jatinder Singh Bedi***, reported in ***MANU/SC/1342/2011***, in which complaint was filed by the wife against the husband for prosecution under Section 500 of the Indian Penal Code for certain allegation made by her husband in divorce petition. The criminal case was stayed till the final disposal of divorce case. It is also argued that no criminal proceedings for defamation can be allowed to continue against a person, who is not the author of the such defamatory statement, relying on the judgment of ***Vineet Jain Vs. N.C.T. Delhi & Ors.*** reported in ***(2012) (3) JCC 2023***, ***Mr. Rajan Biharl Lal Raheja & Ors. Vs. Planman Consulting***

India Pvt. Ltd. & Anr. reported in **185 (2011) DLT 154**, **Indu Jain & Ors. Vs. N.C.T. of Delhi & Ors.** reported in **(2012) (2) J.C.C. 1175**. It is submitted that it was held in **Patitpaban Mohapatra Vs. S.E. Eastern Circle & Ors.**, reported in **MANU/OR/0086/2008** that arbitration is judicial proceeding. Similarly reliance has been placed on the judgment of High Court of Allahabad, Full Bench in case of **Chhunni Lal Vs. Narshingh Das** reported in **(MANU/UP/0325)1917** and **Narayana Ayyar Vs. Veerappa Pillai** reported in **A.I.R. 1951 Mad 34**. It is submitted that doctrine of absolute privilege is applicable in judicial proceeding, who makes a false statements and averments in judicial proceeding and that shall be within the scope of Section 193 of the Indian Penal Code and no separate filing of criminal complaint is required. Similarly it has been held in **K. Daniel Vs. T. Hymavathy Amma** reported in **MANU/KE/0048/1995** that when any defamatory statement is made in a judicial proceedings, the person making such statement has absolute privilege and no defamation lies. Counsel for the petitioners has also placed reliance on the judgment of **Pepsi Food & Anr. Vs. Special Judicial Magistrate (1998) 5 SCC 749**, **Anita Malhotra Vs. Apparel Export Promotion Council 2012 (1) SCC 520**, **K. Srikant Singh Vs. North Eastern Securities Ltd. 2007 (12) SCC 788**, **S.K. Alagh Vs. State of U.P. & Ors. AIR 2008 SC 1731**, **Srei Infrastructure Finance Ltd. Vs. Ruff Drilling Pvt Ltd.** Reported in **2017 (12) SCALE 105**, **P. Chengalvaraya**

Naidu Vs. Jagannath 1994 (1) SCC 1 and Anita Hada Vs. Godfather Travels & Tours Pvt. Ltd. 2012 (5) SCC 661. It is prayed that both the petitions be allowed and the criminal complaint case against the petitioners be quashed.

9. M.C.C.No. 876/2018 has been brought praying to recall the order dated 08.01.2018, passed in W.P.(227) No.911/2017, in which this Court has directed for expeditious trial of the case against the petitioners, this petition shall also be decided along with.
10. On behalf of the respondent, it is submitted that the trial Court and the Revisional Court has not committed any error by initiating the prosecution against the petitioners. Totally false allegations were made by the petitioners in their reply filed before the learned Arbitrator stating that respondent is rank defaulter of all the bankers and he has siphoned off all the moneys and the assets. The purpose and intention making such statement is very clear, that petitioners want to defame and discredit the respondent. The trial Court has considered each and every aspect of the complaint filed and has read out the particulars of the offence to the petitioners, which is not a case of framing charge. The observation made by the revisional Court are not erroneous in any manner, on the other hand the Court has observed that charge framed does not contain facts regarding ingredients of the offence committed. Subsequent to the order passed by the revisional Court, the trial Court has framed fresh

charges against the petitioners, which has been again challenged before the Revisional Court and the same is pending. It is submitted that the petitioners can not make excuse, that they have made statement of counter allegation before the arbitrator, which functions as a Court. The function of Arbitrator is not covered under the definition of Court. It is also submitted that subsequent to failure of the petitioners in revision against the order of framing charge, this is again revision petition filed under the garb of Section 482 of Cr.P.C. Relying on the judgment of ***Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and another***, reported in ***AIR 2004 Bom 143*** it is submitted that in that case, highly defamatory expression were used in the Press-Note viz. connivance, conspiracy, loot of public money, siphoning off funds and unleashing senseless terror etc., which was sufficient to damage the credibility and reputation of the appellant company. Therefore, the allegation made by the petitioners in their reply before the Arbitrator is sufficient to cause damage to the reputation and credibility of the respondent. It is submitted that it has been similarly held by the High Court of Delhi in case of ***Vipul Gupta & Ors. Vs. Robin Gupta & Ors.***, reported in ***2017 SCC OnLine Del 10792***. It is argued that the Hon'ble Supreme Court in ***Manalal Prabhudayal Vs. Oriental Insurance Company Ltd.***, reported in ***(2009) 17 SCC 296*** has held that Arbitration Tribunal is not a Court. It is argued that Hon'ble Supreme Court in case of ***Manohar Lal Vs. Vinesh***

Anand & Ors. reported in **(2001) 5 SCC 407** has held that arbitrator can not be termed as a Court within the meaning of Section 195 of Cr.P.C.. It is submitted that subsequent to exhausting the remedy under Section 397 of Cr.P.C., the petitioners have no entitlement to invoke the jurisdiction of this Court under Section 482 of Cr.P.C. relying on the judgment of Delhi High Court in case of **Suresh Chand Goyal Vs. State and another** reported in **2018 SCC OnLine Del 10505**, it is submitted that High Court exercised extra ordinary jurisdiction under Section 482 of Cr.P.C., which can not be ordinarily invoked in all cases.

11. In reply, counsel for the petitioners submits that Arbitral Tribunal is a quasi judicial body. The award passed by the arbitrator is executable by the Court of District Judge, therefore, a proceeding before the arbitrator is a judicial proceeding. Relying on the judgment of Hon'ble Supreme Court in **Baijnath Jha Vs. Sita Ram & Ors.** reported in **AIR 2008 SC 2778** it is submitted that in a proceeding instituted on complaint, exercise of the inherent power to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. From the very inception the respondent has adopted this malafide tactics against the petitioners, therefore, filing of complaint against the petitioners is misuse of criminal process and with intention to compel the petitioners to come to table for compromise, therefore, it is prayed that petition

be allowed.

12. I have heard the learned counsel for the parties and perused the documents placed on record.
13. The only issue raised in this petition is this whether the statement made in reply before the Arbitration Tribunal by the petitioners is true and based on facts, therefore, the case is under 1st and 9th exception to Section 499 of the Indian Penal Code. Therefore, the matter is required to be examined in accordance with these provisions of law.
14. Section 499 of the Indian Penal Code Exception (1) and Exception 9 is as under :-

Section 499. Defamation. —Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

First Exception.—***Imputation of truth which public good requires 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.

Ninth Exception.—***Imputation made in good faith by person for protection of his or other's interests.***—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

15. It is clearly a case, where the petitioners had made statement in defence before the Arbitral Tribunal and according to them they have made a true statement against respondent and in support of which, documents have been attached along with the petition filed. It is to be noted that the respondent has not made any specific denial regarding his indebtedness with the banks and other institutions. There is no such statement or any ground taken by the respondent that the learned Arbitral Tribunal has given a finding on this point that the statement made by the petitioners in their reply is false.
16. Arbitral Tribunal is a quasi judicial body and before that Tribunal, the procedure is followed as agreed between the parties or as decided by the Arbitral Tribunal itself according to the provisions of Section 19 of Arbitration and Conciliation Act. Therefore, the petitioners were duty bound to submit reply to the claims and the allegation made against them by the respondent in his petition of claim before the Arbitral Tribunal. The 9th Exception of Section 499 of I.P.C. clearly speaks, that it is not defamation to make an imputation on the character of another provided that the

imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good. There is no such finding of the Tribunal or any Court that statement made by the petitioners in their reply before the Arbitral Tribunal is false statement. Hence, on this basis, it is a case which appears to be under the first exception of Section 499 of the Indian Penal Code.

17. Another point for consideration is this that the petitioners have not made any of the allegation, they have made statement before the Tribunal in their reply to protect their interest and their claim by them that they have material to establish the truth of their statement and under the facts and circumstances of this case, this submission can not be brushed aside. In ***Sri Mehaboobkhadri Vs. Sri Abdul Rashid & Ors (supra)***, it has been clearly observed by the Single Judge that the trial Court has not given any finding and come to any conclusion with respect to the allegations made, therefore, there is no ground for prosecution for defamation. The principle that maker of statements in judicial proceedings is entitled to absolute privilege has been propounded and reiterated by the Court in ***Thekkittil Gopalankutty Nair Vs. Melepurath Sankunni Ezhuthaseah (supra)***, ***Chunni Lal Vs. Narshingh Das (supra)***, ***Narayana Ayyar Vs. Veerappa Pillai (supra)***. It has been further held in ***Srei Infrastructure Finance Ltd. Vs. Ruff Drilling Pvt Ltd (supra)*** that arbitration is a quasi judicial proceeding. It is

similarly held in ***Patitapaban Mohapatra Vs. S.E. Eastern Circle (supra)***.

18. Reliance of the respondent on the judgment of Bombay High Court in ***Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and another (supra)*** is not applicable for the reasons that in that reported case defamatory press-note was released. It is not a case where any such press-note was released or any publication was made in any other mode. Other reliance i.e. judgment of Delhi High Court in ***Vipul Gupta & Ors. Vs. Robin Gupta & Ors. (supra)***, ***Manalal Prabhudayal Vs. Oriental Insurance Company Ltd. (supra)*** are judgment in different context.
19. Another reliance of the respondent in ***Manohar Lal Vs. Vinesh Anand & Ors. (supra)*** is on the point that the Arbitral Tribunal is not a Court for the purpose of Section 195 of Cr.P.C. but there is already a settled view that proceeding before the Arbitral Tribunal is a quasi judicial proceeding, therefore, the ratio in such judgment does not find any help to the respondent.
20. Also considered on the objection raised by the respondent that petition under Section 482 of Cr.P.C. is not maintainable for which reliance has been placed on the judgment of ***Suresh Chand Goyal Vs. State & Anr. (supra)*** a judgment of Delhi High Court, in which it was observed that the trial Court has found the case made out for putting the petitioner in trial for the charges on the

basis of charges framed, therefore, the Court refused to invoke the jurisdiction under Section 482 of Cr.P.C., whereas, the grounds raised in these petitions by the petitioners is basically this that the trial of the petitioners for offence under Section 500 & 501 of the Indian Penal Code is totally an abuse of criminal process. Hence in such case, if this Court comes to the conclusion that trial is an abuse of process in that case, the power under Section 482 of Cr.P.C. may be invoked.

21. Trial for offence under Section 500 and 501 of the I.P.C. is a summons trial, in which the persons accused does not have any opportunity to make a prayer for discharge, therefore, in such case, when there are grounds available to demonstrate that the grounds of prosecution falls under first exception as well as ninth exception of Section 499 of I.P.C., looking to these circumstances I am of this view that trial of the petitioners for the offence above mentioned is misconceived, uncalled for and without any basis. Hence, such trial can be deemed as abuse of criminal process, therefore, after due consideration I feel inclined to allow these petitions.
22. Accordingly, both the criminal miscellaneous petitions are allowed. The proceedings against the petitioners in Complaint Case No. 32/2015, pending before the Chief Judicial Magistrate, Bilaspur for the offence under Section 500, 501 of the Indian Penal Code is hereby quashed. Petitioners are discharged.

23. After the orders that have been passed with respect to the above petitions, there is no requirement to pass any order with respect to MCC No.876/2018, which rendered without any effect, therefore, the MCC is simply disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge