

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.06.2019
Pronounced on : 13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.20088 of 2013
and
CrI.M.P.Nos.2 & 3 of 2011

1.M/s.Nissan Motors,
Corporate Office,
ASV Ramana Towers,
37 & 38, Venkatanarayana Road,
T.Nagar,
Chennai-600 017.

2.Mr.Kenichiro Yomura,
The Managing Director,
M/s.Nissan Motors,
Corporate Office,
ASV Ramana Towers,
37 & 38, Venkatanarayana Road,
T.Nagar, Chennai-600 017.

3.Mrs.Reshma,
Manager-Legal,
M/s.Nissan Motors,
Corporate Office,
ASV Ramana Towers,
37 & 38, Venkatanarayana Road,
T.Nagar, Chennai-600 017.

... Petitioners/Accused

सत्यमेव जयते Vs.

S.Giri Prasad,
S/o.Shivashanmugam.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint filed against the petitioners in C.C.No.3704 of 2013 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners: Mr.P.V.Balasubramaniam
For Respondent : Mr.P.T.Perumal

ORDER

This Criminal Original Petition has been filed to quash the private complaint in C.C.No.3704 of 2013 for the offence under Sections 499 and 500 of IPC, pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

2.The gist of the case is that the respondent is a practising Advocate at Madras High Court and hails from the Advocates family. The 2nd and 3rd petitioners are the Managing Director and Manager-Legal of the 1st petitioner's company. The respondent's wife bought a new Nissan Sunny Car in the 1st petitioner's company in her name and registered with number TN 01 5700. The respondent left the said car to the 1st petitioner's authorized dealer M/s.Jain Jubilant Cars (P) Ltd., for free service as well as for the change of defective left alloy wheel. After the delay of seven days on 06.10.2012 the respondent was called to take the vehicle as the service was done. When the respondent insisted for the service record, the 1st petitioner admitted that the service record is not available with the vehicle. Thereafter, the respondent took the vehicle without the complaints being attended by the 1st petitioner service centre. Dissatisfied with the 1st petitioner company is not rendering prompt service, the respondent asserted and expressed his consumer rights before the District Consumer Redressal Forum (South), Chennai.

3.When the respondent demanded compensation for the deficiency of service, AGM sent an E-Mail agreeing to pay compensation within a couple of days. Though the compensation was not paid, the spare part charges were collected for defective parts of the car. Hence the respondent's wife filed a complaint before the District Consumer Redressal Forum (South), Chennai in C.C.No.301 of 2012 against the petitioners.

4.The 1st petitioner's company filed reply statement in the consumer complaint filed by the respondent's wife before the District Consumer Redressal Forum (South), Chennai, in which it is stated that the respondent was under the influence of Alcohol, it was difficult for the service personal to control him and informed him that they would revert him with AGM. For the imputation made in the above reply statement, notice was sent to the 2nd and 3rd petitioner on 18.05.2013. On receipt of the same, a reply was sent on 14.06.2013 as if the contents of the reply statement contains actual events, witnessed by the technicians and workers, who were attended the respondent.

5.The 3rd petitioner is the Authorized signatory of the 1st petitioner company, therefore, he verified reply statement

against the respondent as per the instructions and advice of the 2nd petitioner. Therefore, the petitioners have committed criminal defamation punishable under Sections 499 and 500 of IPC.

6.The learned counsel for the petitioners would submit that the 1st petitioner is an Automobile Manufacturing Company, the 2nd petitioner is the Managing Director of the 1st petitioner company/M/s.Nissan Motor India Private Limited and the 3rd petitioner is the Manager-Legal of the 1st petitioner company who interacted with customers for sales and service through several private dealership networks. One such dealer is M/s.Jain Jubilant Cars Private Limited, Egmore.

7.The respondent purchased a Nissan Sunny XVD Diesel Car from the dealership in the month of August 2012. During September 2012 the respondent visited the dealership with regard to air leakage in the front tire of the car. The respondent insisted that the above defects are covered under warrant terms and claimed it to be a manufacturing defect. After due checks and tests, the dealership informed that the defects are not covered under the manufacturer's warranty. Thereafter the respondent made efforts to persuade the dealership to replace the wheel rim under warranty terms and also had heated and exchanged words with the technical and other personal of the dealership, who attended the respondent. Thereafter the respondent filed a complaint before the District Consumer Redressal Forum (South), Chennai in C.C.No.301 of 2012 claiming deficiency of service and for refund of Rs.8,300/- the cost of wheel rim and Rs.5,00,000/- as damages for alleged deficiency of service and for causing mental agony to the petitioners.

8.In the reply statement filed by the 1st petitioner before the District Consumer Redressal Forum (South), Chennai in C.C.No.301 of 2012 as mentioned as follows:-

"That with regard to averments in paragraph 7 (numbered as No.5 in the complaint), it is stated that the complainant including the complainant's Husband was abusive to dealership personnel as admitted by the complainant itself in the complaint and the complainant's Husband accompanying the complainant was also under the influence of alcohol and it was difficult for the service personnel to control the complainant and in order to avoid a scene, the dealership personnel informed the complainant that they would revert to the complainant after discussions with the AGM. All other averments adverse to the opposite party No.1 are hereby denied as false."

9.According to the petitioners the imputation would come under (1) and (8) of Section 499 IPC and further they were not committed any offence and the contents of the reply is extracted above is a factual reply given to the corresponding paragraph in

the complaint filed by the respondent before the District Consumer Redressal Forum (South), Chennai in C.C.No.301 of 2012.

10. Further there is no evidence as regards the 2nd and 3rd petitioners to show that they are in any way connected to the averments made in the complaint. The petitioners did not interact with the respondent and had interactions with the dealership of the 1st petitioner viz., M/s.Jain Jubilant Cars (P) Ltd. Hence, the proceedings in C.C.No.3704 of 2013, pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet is a motivated one, spited with vengeance and the initiation of the case is with malafidy.

11. The learned counsel for the petitioners would further submit that the lower Court had erroneously without taking proper steps and without applying mind before taking cognizance of the complaint had erroneously issued summons. On perusal of the records, it is seen that the lower Court based on the mere statement of the respondent and his colleagues and without any other documents and materials, had come into subjective satisfaction, mechanically send the summons to the petitioners. Hence, he prayed for quashing of the proceedings in C.C.No.3704 of 2013 on the file of the learned XVIII Metropolitan Magistrate, Saidapet.

12. The learned counsel for the petitioner relied upon the following citations to substantiate his arguments:-

(i) Bhagat Singh Sethi and Others Versus Zinda Lal decided on 21.10.1965. The relevant portion of the order is extracted here under:-

"18.Good faith is relative to a great extent and must be determined by the circumstances under which the imputation was made, the social status and the level of education of the person making the imputation and his reasoning capacity."

(ii) GHCL Employees Stock Option Turst Versus India Infoline Limited reported in (2013) 2 Supreme Court Cases (Cri) 414. The relevant portion of the Judgment is extracted here under:-

"19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating Criminal action against them."

13. Per Contra, the learned counsel for the respondent would submit that the respondent is a teetotaler hails from illustrious family of Advocate and he is practising an Advocate

in High Court of Madras for the past several years and the imputation against him is defamatory. The respondent purchased a car in his wife's name from the petitioners, who are the manufacturers of M/s.Nissan Motors. While the respondent purchasing the car entered into extended warranty, it was represented that the entire car was covered with warranty with free replacement. The respondent noticed the problem in the car about gradual air leakage in the front left side of the wheel, which defects was not rectified by the petitioners. On the other hand, they have collected a sum of Rs.8,700/- (Rupees eight thousand seven hundred only) for the replacement charges. Against which the respondent has filed a compliant before the District Consumer Redressal Forum (South), Chennai in C.C.No.301 of 2012, in which the petitioners made remarks against the respondent, which was also read by his colleagues, thereby got publicised and the act of the petitioners amounted to defamation. Hence the case against them has been filed before the learned XVIII Metropolitan Magistrate, Saidapet in C.C.No.3407 of 2013. The points raised by the learned counsel for the petitioners are to be taken only during the trial and not in this quash petition.

14.The learned counsel for the respondent has relied upon the following citations as follows:-

(i) M.N.Damani Versus S.K.Sinha and others, reported in (2001) 5 SCC 156. The relevant portion of the Judgment is extracted here under:-

"Having regard to the facts of the instant case and in the light of the decisions in Sewakram Sobhani V.r.K.Karanjia, Chief Editor, Weekly Blitz and Shatrughna Prasad Sinha V.Rajbhau Surajmal Rathi we have no hesitation in holding that the High Court committed a manifest error in quashing the criminal proceedings exercising jurisdiction under Section 482 of Cr.P.C."

(ii) M.N.Damani Versus S.K.Sinha and Others reported in (2001) 5 SCC 156. The relevant portion of the Judgment is extracted here under:-

"10. It is the settled legal position that a Court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate....."

(iii) M.A.Rumugam Versus Kitty @ Krishnamoorthy reported in MANU/SC/4958/2008. The relevant portion of the Judgment is extracted here under:-

"16.It is now a well-settled principle of law that those who plead exception must prove it . The burden of proof that his action was bonafide would, thus, be on the appellant alone."

(iv) K.A.Ravindranathan Versus K.Ravindra Nair and Ors. reported in MANU/CG/0034/2005. The relevant portion of the Judgment is extracted here under:-

21. The question regarding falsity or good faith is not required to be decided at this juncture, because allegations are false are to be proved by the respondent No.1 by substantial evidence and allegations are made in good faith can be a defence of the petitioner and if pleaded during trial before the trial Court and on substantial evidence alone the trial Court can decide whether the imputations are made in good faith or not.

(v) B.Pramod Versus A.Azad Babu and C.M.Nazar (P.P.) reported in MANU/KE/0165/2010. The relevant portion of the Judgement is extracted here under:-

"9.Paragraph 8 in Narayanan's case (upra) - 1982 KLT 378 will indicate that actual loss of reputation need not be proved. An accused person, as in this case, who takes shelter under Exception 9 to Section 499 IPC will have to show that the imputation was made in good faith. In order to claim good faith the accused must show that before making the imputation he had made inquiries with due care and attention and that he was satisfied about the truth of the imputation made by him. (Vide Sukra Mahto V.Bsuldeo Kumar-MANU/SC/0194/1971 : AIR 1971 SC 1567)."

(vi) Jeffrey J. Diermeier and Anr. Versus State of West Bengal and Anr. reported in MANU/SC/0390/2010. The relevant portion of the Judgment is extracted here under:-

"33.In the instant case, the state for recording or evidence had not reached and, therefore, in the absence of any evidence on record, we find it difficult to return a finding whether or not the appellants have satisfied the requirements of "good faith" and "public good" so as to fall within the ambit of the Tenth Exception to Section 499 IPC. Similarly, it will neither be possible nor appropriate for this Court to comment on the allegations levelled by respondent NO.2 and records a final opinion whether these allegations do constitute defamation. Regarding the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties."

(vii) George J.Pynadath, Managing Partner, Pynadath Finance Corporation, Near Police Station Chalakudy, Mary George W/o.The 1st petitioner, Pynadath House, Railway Station Road, Chalakudy and Rosy W/o.Chirayath Raphael, Railway Station Road, Chalakudy Versus Sushamadevi W/o.Sasi, Thaikattu House, Koratty Desom, Muringoor Thakkummury Village, Mukundapuram Taluk and State of Kerala, rep. by Public Prosecutor, High Court of Kerala,

Ernakulam reported in MANU/KE/0022/2012. The relevant portion of the Judgment is extracted here under:-

2.Whether the publications were effected in good faith to protect the interest of the firm and whether the petitioners are entitled to get protection on any of the exceptions referred to in Section 499 are matters which the petitioner can urge before the trial Court at the appropriate stage."

15.Considering the rival submissions and on perusal of the materials, this Court finds that, in the complaint filed by the respondent in C.C.No.301 of 2012 the 1st petitioner has not been arrayed as any Juristic person. From the docket order in C.C.No.3704 of 2013 dated 17.07.2013, it is seen that "Complainant present PW1 to PW3 examined. Heard prima facie case made out against A1 to A3 u/s.500 IPC. Issue summons to A1 to A3 call on 07.08.2013."

16.The respondent's wife purchased the car on 24.08.2012 from the 1st petitioner and the car has been entrusted for service to M/s.Jain Jubilant Cars (P) Ltd., on 29.09.2012. After the service, it was taken delivery on 06.10.2012. Since the defect in the left alloy wheel continued, the said car again presented for service on 09.10.2012. Thereafter on 09.10.2012 the said defect was rectified and a sum of Rs.8,700/- was charged, which according to the respondent is unjustified since the said vehicle has been covered with extra warranty. As per extra warranty, the spare parts of the vehicle are to be changed free of cost. There seems to be some misunderstanding in interpretation of the extra warranty between the 1st petitioner and the respondent. The respondent in an emotional mood had picked up a quarrel for the same in the showroom. In order to avoid an ugly scene in the showroom which would jeopardise the business, the AGM of the 1st petitioner pacified them and brought the situation under the control. On that occasion, according to the respondent, the petitioner has promised to compensate, which they failed to do the same. Hence, the respondent filed a complaint before the District Consumer Redressal Forum (South), Chennai in C.C.No.301 of 2012.

17.On perusal of the exchange of notices, complaint filed by the respondent in C.C.No.301 of 2012 and reply statements of the petitioners, it is seen that the 1st petitioner made an observation in Paragraph 8 of his reply statement, which according to the respondent is with imputation, there is no imputation in the reply statement of the 2nd and 3rd petitioners.

18.Further this Court in the Judgment reported in 2012 (2)

MWN (Cr.) 354 in the case of Chief Educational Officer, Salem Versus K.S.palanichamy, has held as follows:-

"Applying the above principles, if we analyse the definition of defamation in Section 499 of IPC it will be crystal clear that it is an offence involving personal malicious intent, which is evident from the fact that one of the essential ingredients is either intention to harm or knowledge or reasons to believe that such imputation will harm the reputation of the other. Therefore, an artificial/juristic person cannot be prosecuted for an offence under Section 500 of IPC for such an artificial/juristic person cannot be attributed with any malicious intention because malicious intention can be attributed only to a living person. In the instant case, the Chief Educational Officer/the First Accused is an artificial/juristic person and therefore, as against him, the prosecution for offence under Section 500 of IPC cannot be maintained."

19. In this case the 1st petitioner is an artificial/juristic person cannot possess mensrea and thus cannot be held criminally liable for the offence of defamation punishable under Section 499 and 500 of IPC. There is no provision in the IPC which makes a Director or its officers vicariously liable for the act of the corporate entity. In the complaint of the respondent it is alleged that the offence under Sections 499 and 500 of IPC have been committed by the 1st petitioner in filing reply statement.

20. In the case of Raymond Ltd., & Ors Versus Rameshwar Das Dwarkadas P. Ltd., reported in 2013 SCC Online Del 1328 : (2013) 2 DLT (Cri) 853 has held as follows:-

"In the penal code also there is no provision which makes a company or an association of persons liable for prosecution for the offences of which mens rea is one of the essential ingredients. In this situation and in view of the aforesaid decision of the Apex Court, it is apparent that if a statute defining the offence makes the mens rea or particular state of mind to be essential ingredients of such offence, a company or an association of person cannot be prosecuted for such offences though its officers or directors responsible for the management of the affairs of such company may be liable for prosecution. Similar view was expressed by this Court in an earlier decision in AIR 1949 CAL 689 where it has been held that bank is a juridical person and not an actual person. The bank is such that it cannot be said to have the mens rea required for the offence of cheating. The bank as such cannot be punished for cheting because it has no physical body."

21. In view of the above, this Court finds that since the 1st petitioner cannot possess any mens rea and he cannot be guilty of the offence under Sections 499 and 500 of IPC. In view of the above no case could be proceeded against the artificial/juristic person.

22. There is no overtact against the 2nd and 3rd petitioner. In the absence of any specific allegations the 2nd and 3rd petitioners cannot be prosecuted. In the case of Pepsi foods limited and another Versus Special Judicial Magistrate and others reported in (1998) 5 SCC 749 has held as follows:-

"The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law application thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused."

23. The respondent must prove that the accused has made 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. In this case the 2nd and 3rd petitioners have not made any such imputation.

24. The Hon'ble Apex Court and this Court in several cases held that the summoning of an accused in a criminal case is a serious matter and the summoning order must reflect about application of mind to the facts of the case and the law applicable thereto. In this case, the learned XVIII Metropolitan Magistrate, Saidapet did not even record as to what are the materials perused upon which cognizance has been taken. Strangely, the learned Magistrate has simply ordered to issue summons to the accused.

25. From the reasons stated above, I hold that the complaint is nothing but a clear abuse of process of law as well as Court. Hence, the proceedings in C.C.No.3704 of 2013, pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet is hereby quashed. Accordingly, this Criminal Original Petition is Allowed. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(J)

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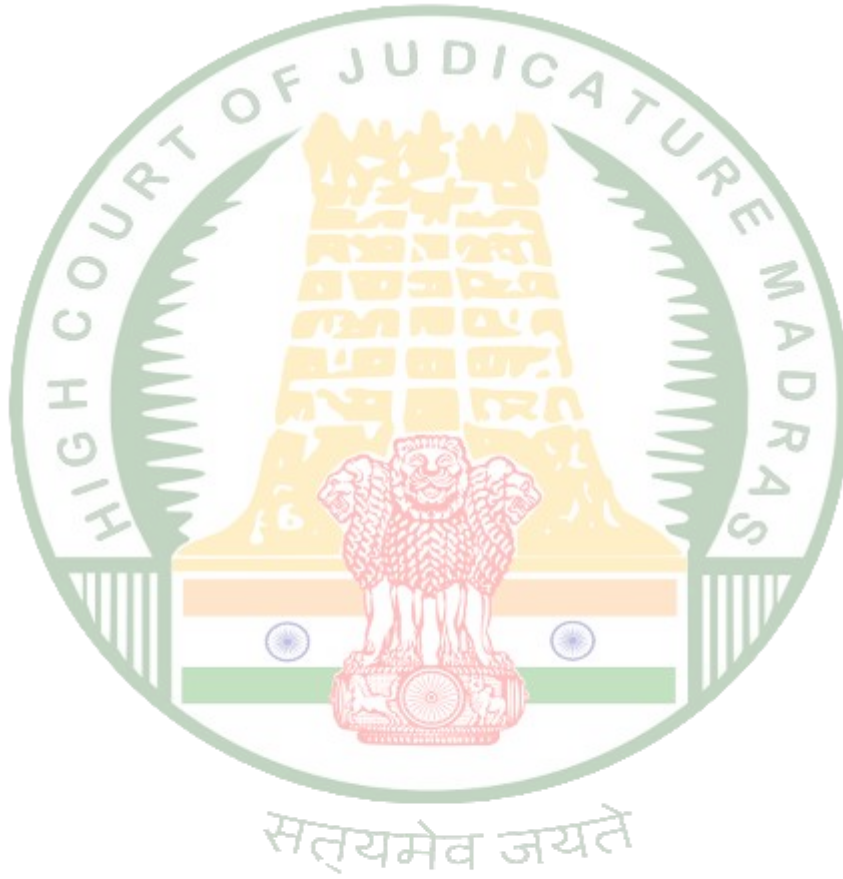
Sub-Assistant Registrar

To

The XVIII Metropolitan Magistrate,
Saidapet,
Chennai.

Cr1.O.P.No.20088 of 2013

SP(03/10/2019)



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