

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 09.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.42 of 2019

M.Gagan Bothra ...Petitioner/Complainant

-Vs-

- 1.Indian Overseas Bank,  
Commercial and Institutional  
Credit Branch, No.98A,  
Post Bag No.351 Auras Corporate  
Centre, Dr.Radhakrishna Salai,  
Mylapore, Chennai 600 004.
- 2.Chetan Jagtap  
Chief Manager/Authorized Manager  
of Indian Overseas Bank Commercial  
and Institutional Credit Branch,  
No.98A, Post Bag No.351 Auras  
Corporate Centre, Dr.Radhakrishna Salai,  
Mylapore, Chennai 600 004. ...Respondents/Accused

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. praying to set aside the order dated 13.12.2018 passed in Crl.M.P.No.3830 of 2018 by the Hon'ble VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : M.Gagan Bothra  
Party in Person

O R D E R

The above Criminal Revision Petition has been filed against the Order passed in Crl.M.P.No.3830 of 2018 dated 13.12.2018 by the learned VII Metropolitan Magistrate, George Town, Chennai, dismissing the private complaint filed by the petitioner herein

under Section 200 of Cr.P.C to take cognizance against the accused under Section 499 r/w.500 IPC.

2.The revision petitioner appeared in person and made the following submissions.

According to the petitioner, that he had approached National Company Law Tribunal (NCLT) by invoking the provisions of Insolvency and Bankruptcy Code, 2016, and the Company Petition was pending adjudication by the Tribunal. In the proceedings, it appears that the respondent/accused had taken out a Miscellaneous Application No.327 of 2018 to seek certain orders as against the petitioner. In the application, an affidavit was filed by the respondent containing certain allegations alleging that there was a collusion by the petitioner herein in order to defeat the rightful claims of the respondents/Bank. According to the petitioner that the respondents have knowingly

alleged fraud against the petitioner when there was no such fraud played by him and therefore it amounted to defamation.

3.In the said circumstances he appears to have approached the trial Court and filed a private complaint under Section 200 of Cr.P.C. The learned Magistrate after adverting to the materials and the submissions made by the petitioner and dismissed the same vide its order dated 13.12.2018. The learned Magistrate in para no.5 has reasoned that the exceptions which are provided under Section 499 of IPC get attracted in this case and therefore no case of defamation is made out for the Court to take cognizance. Any averments in the affidavit filed in the Judicial proceedings or any orders cannot be construed as defamatory as per Section 499 of IPC. The operative portion of the order passed by the learned Magistrate in para no.5 is extracted hereunder:

"5.All the allegations made by the complainant is not defame the complainant by the public. Since, no evidence for given that, how the complainant was defamed by the public and the name of the person who defamed the complainant as a fraud was not also examined as witness. Further, as per the Section 499 of IPC says that, defamation means - Whoever, by words either spoken or intended to be heard, or by sign, or by visible representation, makes, or publishes any imputation concerning any person intending to harm, or knowing, or having reasons to believe that such imputation will harm the reputation of such person, is said, except in the cases here in after excepted to defame the person. There are 10 exceptions given in the Court. In which the above private complaint coming

under the Fourth and Fifth exceptions mentioned in the Section 499 of IPC. Hence, the proceedings of the Court or merits of the case decided in the Court or conduct of witness and others concerned are all coming under the exceptions. Hence, there is no defame allegations in the above case."

The petitioner re-iterated the same submissions as submitted before the trial Court.

4.This Court does not find any merit in the submissions made on behalf of the petitioner, since the allegations as contained in the affidavit filed in the Judicial proceedings, under no circumstances, can amount to defamatory in nature warranting action to be taken under Section 499 of IPC. In the said circumstances, the learned Magistrate has correctly rejected the petition by quoting exceptions as found under Section 499 IPC and this Court does not find any infirmity in the order passed by the learned Magistrate calling for any interference from this Court.

5.Moreover this Court finds that the petitioner is trying to project the case of defamation where none exists and the so called, allegations, which contained in such affidavits filed in Judicial proceedings are being mis-construed by the petitioner as if that those allegations were made with that intent to defame. In any event, whether the allegations have any basis or not has to be decided by the forum concerned and it is certainly not open to the petitioner to rely on such allegations and arm-twist the respondents in a Criminal Court by filing private complaint against them. This Court is of the view that the private complaint filed by the petitioner is an abuse of process of the Court and hence the trial Court has rightly rejected the same.

6.For the above said reasons this Court does not find even iota of the merit and substance in the present revision case and hence the same is dismissed.

rna/cgi

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The learned VII Metropolitan Magistrate,  
George Town, Chennai.

+2cc to Mr.Gagan Bothra, Advocate, S.R.No.5399

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AK (CO)  
KAK (22/02/2019)



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