IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 18311 of 2014
and MP.No.1 of 2014

1.M/s. Bennett Coleman and Company Ltd.,
Owner of the Economic Times,
represented by R.Venkata Kesavan,

2.M/s. Bennett Coleman and Company Ltd.,
Owner of the Economic Times,
Represented by S.Santhanagopalan,

3.S.Santhanagopalan
4.Sriram Ramakrishnan
5.R.Venkata Kesavan
6.Bodhisatva Ganguly
7.Pankaj Mishra
8.Souvik Sanyal .. Petitioners/Accused

Vs.

R.Subramanian
.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the complaint filed by the respondent in C.C.No.5713 of 2013 on the file of the Hon'ble XVIII Metropolitan Magistrate at Saidapet, Chennai and quash the same.

For Petitioners : Mr.Prashant Rajagopal
For Respondent : No appearance

सत्यमेव जयते
WEB COPY

O R D E R

The petitioners having many newspapers, out of which the two viz, " Economic Times" and " Times of India" are the ones which have been subjected to in the criminal litigation. The crux of the issue is that the respondent/complainant's company was ordered to be wound up and a liquidator was appointed which were reported by both these newspapers in their characteristic manner respectively.

2.The petitioners had contended that both the news items were only reporting of the events which had already taken place and did not contain anything, which was untrue and especially the one in "Economic Times" was based on inputs received from some of the employees of the complainant's company. The "Economic Times" also carried an interview with Mr. Azim Premji, founder of WIPRO, who had stake in the complainant's company and which also according to the complainant, both the news items were intended to harm his reputation and his company, which according to him was a pioneer in retailing, doing very well in terms of business.

3. The petitioners on their side have contended that their news items were based on detailed investigations and that the complainant's company had reputed investors like Azim Premji and ICICI Ventrue Private Limited, which generated great public interest and it was the duty of the responsible newspaper to present the factual position before the public. In the interview of Mr. Azim, one of the stake holders of the complainant's company, it was stated by him that

> " Subhiksha was an error. You may see more visibility on it going forward, let's wait till then. Subhiksha was unfortunate. I think it's a retail equivalent of Satyam. I think the media has completely ignored it, it's a very interesting minefield for you. It's an out and out fraud, there's no question on it. The company Law Board is investigating it. There was an overstatement of accounts, fake inventory, fake bills, fake companies that money was transferred to. At the time of investment that was not visible to us"

According to the petitioner, they have been maintaining very high standards of honest journalism and unbiased approach towards reporting on the basis of authentic information and evidence irrespective of any body's public image or stature.

4. In this context, the order passed by this Court in O.P.No.68 of 2009 dated 29.02.2012 assumes significance. Some of the observations made in the above said order, which are furnished below gives a clarity on the subject.

> 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.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

... 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 available 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."

It is therefore clear that both the newspaper items were only based on the various inputs, including the observations made by this Court and they are in no way intended to harm the reputation of the complainant.

5. Mr.Azim Premji is one of the investors in the respondent's company and when asked about his decision for his investment, after the literal collapse of the complainant's company stated as follows.

" Subhiksha was an error. You may see more visibility on it going forward, let's wait till then. Subhiksha was unfortunate. I think it's a retail equivalent of Satyam. I think the media has completely ignored it, it's a very interesting minefield for you. It's an out and out fraud, there's no question on it. The company Law Board is investigating it. There was an overstatement of accounts, fake inventory, fake bills, fake companies that money was transferred to. At the time of investment that was not visible to us".

6. Mr. Azim Premji being one of the very successful business man of the country being a stakeholder in the complainant's company itself had an element of value addition. As already narrated earlier about the observation made by this

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Court in O.P.No. 68 of 2009, the complainant's company was in dolrums having neither stocks nor assets for the company to even survive and following the similar paths of M/S. Satyam Computers the statement of Mr.Azim Premji is only a statement made in good faith. In fact, by the time, his interview was published as many as 43 shell companies were detected through which transactions were made making things apparent as to where the complainant's company went wrong. Strictly speaking his statement in the interview has not cast any aspersion directly on the complainant and it was only on the company and that too based on the findings of the various statutory agencies.

7. It is also relevant to extract the X exception of section 499 of the Indian Penal Code.

> "Tenth exception -caution intended for good of person to whom conveyed or for public good. It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good".

8. In this backdrop, the decisions relied on by the learned counsel for the respondent/complainant in (i) Alli Rani Joseph Mathew and 36 others Vs. P. Arunkumar in Crl.O.P.No.10481 of 2012 dated 03.08.2012, (ii) M.Arumugam 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), 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 threrefore, there was element of good faith in the allegations made by the petitioners.
>
> (ii) It cannot also be said that it is too premature to conclude that averment were made in good faith in the instant case for the simple reason that the petitioner had stakes 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. Hence for all the

WEB COPY

reasons stated above, the proceedings in C.C.No.2242 of 2012, C.C.No.2243 of 2012, and C.C.NO.2875 of 2011 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai is liable to be quashed.

9. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.5713 of 2013 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai is quashed. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa/lpp

To

1.The Metropolitan Magistrate No. XVIII,
Saidapet, Chennai.

2.The Public Prosecutor
High Court Madras.

+1cc to Mr.Prashant Rajagopal, Advocate sr.22450(13/05/2019)

Crl.O.P.No. 18311 of 2014
and MP.No.1 of 2014

vgii(co)
nr 08/04/2019

सत्यमेव जयते
WEB COPY