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

+ **CRL.M.C. 3574/2017 & CRL.M.A. 14536/2017**

ABNASH CHANDER MAHAJAN & ANR Petitioners

Through: Mr. Vineet Malhotra, Mr. Rajesh
Agarwal and Mr. Shubhendu
Kaushik, Advocates

versus

NCT OF DELHI & ANR. Respondents

Through: Mr. Panna Lal Sharma, APP for State
with SI G.R. Meena, P.S. Ranjit
Nagar.
Mr. Abhishek Paruthi for Mr. yashvir
Sethi, Advocate for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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28.01.2020

1. Vide the present petitions, petitioners seeks direction thereby setting aside order dated 08.08.2017 and quashing of Revision Petition No. 55948/16 as also setting aside order dated 25.02.2013 and quashing of complaint case bearing No. 119/1 under Sections 499/500 IPC.
2. Brief facts of the case are that respondent No.2 has filed a criminal complaint before the trial court alleging against petitioners that they have got published a defamatory public notice in Hindustan Times dated 18.06.2010 and thus committed an offence under section 499/500 IPC. Respondent No. 2 got recorded pre summoning evidence of CW-1 Mohan Lal Garg & CW-2 Pankaj Arora, which led to passing of the summoning

order dated 25.02.2013.

3. Thereafter, petitioners got discharge under section 251 Cr.P.C. before the trial court and pointed out that by the bare reading of the impugned newspaper public notice dated 18.06.2010, it reveals that the same was issued by the counsel for giving information to the general public that "...the petitioners have filed cases alleging cheating/fraud against the respondent - complainant, which are being enquired into by the law enforcement agencies; and that a petition in the company law board is also pending...".

4. However, said application has been dismissed vide order dated 09.09.2015. Being aggrieved, matter was taken up before the Revisional Court by way of Criminal Revision Petition No. 55948/ 2016, whereby the Revisional Court vide order dated 8.8.2017 dismissed the revision petition.

5. Learned counsel appearing on behalf of petitioners submits that it is undisputed fact between the parties that petitioners had earlier made a complaint to the police under Sections 409/420/465/467/468/471/120B/34 IPC. However, FIR bearing No. 121/2010 was registered, pursuant to direction under Section 156(3) Cr.P.C. and investigation was transferred to EOW. The allegations made therein, broadly stated that "...in the year 2005, the petitioners had come to an understanding akin to partnership with the respondent-complainant and had invested ₹1.8 Crore for the development of the multiplex cum mall in the name of "Vikas Cine Mall", and were allotted 16.35% shares in the company. However, it was found that there was large scale misappropriation, breach of trust and divergent of funds which requires investigation...", and accordingly the complaint was made to the police which led to register FIR No. 121/2010. The police after investigation found that all the allegations made therein and disputes between the parties are

primarily relating to the CLB, regarding which a petition is already pending before CLB. In view of the above, a subsequent closure report dated 28.02.2012 was filed before the learned Metropolitan Magistrate stating that no cognizable offence is made out. On a protest/objection petition by the petitioners herein, before concerned court the matter was directed to be reinvestigated vide order dated 24.10.2013. Simultaneously, in the petition before the company law board, it is a clear finding made for misfeasance committed by the respondent-complainant. Accordingly vide order dated 16.01.2014, directions were passed for calculating the amount involved, by appointing a Chartered Account. The Chartered Accountant submitted his report dated 04.02.2015 giving the valuation of shares of the petitioners as ₹12.67 Crores. Subsequently directions have further been passed by this Court for deposit of the amount involved in the Court.

6. It is further submitted that there is a second simultaneous criminal complaint bearing No. 121/1 with identical facts filed against the petitioners for the same newspaper publication by Vikas Promoters Pvt. Ltd. In that case also, the trial court had passed the same summoning order, and thus there were two revision petitions before the Revisional Court. In addition, there was a 3rd case before the trial court, being CC No.126/1, under Section 387 IPC, filed by the respondent implicating the petitioners, alleging that petitioners had made threatening calls in order to recover their money, which amounting to attempt to extort. Since, it is warrant triable case matter was fixed by the trial court for pre-charge evidence.

7. On the other hand learned counsel on behalf of respondent submitted that it is not in dispute that cases are pending between the petitioners and respondent. However public notice is sent in the newspaper to the public at

large. Thus, petitioners have maligned the reputation and defamed the company and its promoters. Therefore, the Court below has rightly passed the order by issuing summons against the petitioners. Moreover, in the public notice, there is no property number mentioned, therefore, the present petition deserves to be dismissed.

8. As per Ninth Exception of Section 499 IPC, 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.

9. Under Tenth Exception of Section 499 IPC, 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.

10. It is admitted case that petitioner and respondents have inter se cases regarding valuations of shares as mentioned above. Therefore, by any publication, if it is conveyed to the public at large that dealing with the respondent company and its Directors shall be at its own wish and risks and the facts are true. In my considered opinion, that does not come under Section 499 IPC.

11. In view of the above, I hereby set aside impugned order dated 25.02.2013.

12. Petition is accordingly allowed.

SURESH KUMAR KAIT, J

JANUARY 28, 2020

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