

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2020
PRONOUNCED ON : 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.23466 of of 2014
in
C.C.No.2556 of 2013

1.Royal Bank of Scoltand NV
(formerly known as ABN AMRO NV),
rep.by its Power Agents, Mr. Anurag Desai & Mr.Dinkar.P
having its Corporate Office at
Sakhar Pbhavan,
Nariman Point,
Mumbai – 400 021.
and Branch Office at
No.1, Harrington Road,
Chennai – 600 006.

2.Anurag Desai S/o. Capt.DS Oberoi,
Royal Bank od Scoltland NV,
Sakhar Bhavan,
Nariman Point
Mumbai – 400 021.

3.P.Dinkar S/o. PVNS Prasad,
Royal Bank od Scotland NV,
Sakhar Bhavan,
Nariman point ,
Mumbai – 400 021.

R.Subramanian

... Petitioners / 1 to 3 Accused
Vs.
... Respondents/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records Pertaining to C.C.No.2556 of 2013, pending on the file of the Learned XIV Metropolitan Magistrate, Egmore, Chennai and quash the same and pass such further order as this Hon'ble Court may deem fit and proper given the fact.

For Petitioners : M/s.R & P Partners

For Respondent : Mr.R.Subramanian,
Party in Person

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.2556 of 2013, pending on the file of the Learned XIV Metropolitan Magistrate, Egmore, Chennai and the same and pass such further other orders as this Hon'ble Court may deem and quash the same.

2.The learned counsel appearing for the petitioners would submit that the first petitioner is an banking company, incorporated under the Laws of Natherlands, carrying on business, all over India, represented by its power Agents, Mr. Anurag Desai and Mr. Dinkar, both duly authorized vide Power of Attorney dated 11th November 2010. The second and third petitioners are the Branch Manager / Authorized Signatory of the first petitioner Bank respectively. The learned counsel further submitted that the Respondent herein is the Managing Director of a Company known as M/s.Subhiksha

Trading Services Limited (hereinafter referred to as the “ Said Company”). The said company was incorporated as a Private Limited Company on 10.04.1997. It later became a Public Limited Company, under the provisions of the Companies Act, 1956, on 30th March 2005. The said Company was involved in the business of Retail Trade and in the Course of business, established several retail outlets all over India. At request of the said company, the first petitioner bank had granted financial assistance, viz., overdraft facility for INR 200 million and Short term Loan for INR 150 million to the said Company, vide letter dated 9th March 2007. Subsequently, the first petitioner Bank through letter dated 18th April 2007, extended the short Term Loan from INR 150 million to INR 300 million to the said company (hereinafter collectively referred to as “ said Facilities”) based on a request from the said Company. For availing the said facilities, the respondent, who is the Managing Director of the said Company, has executed a Personal Guarantee in favour of the first petitioner Bank.

3.Continuing further, the learned counsel for the petitioners submitted that the said Company availed various credit facilities not only from the first petitioner bank but from 13 other Banks/ Financial Institutions. The

outstanding loans due and payable by the said Company to the Banks/ Financial Institutions is more than INR 800 crores, as of March 2009 itself. The security that was granted to various Banks/ Financial Institutions by the said Company was the stock in trade, book debt, inventories and receivables. Thereafter, the said company failed to repay the loan amounts and committed default and therefore, the first petitioner bank recalled the said facilities vide notice, dated 23.02.2010 and called upon the said Company to repay the outstanding loan together with interest thereon, failing which, the first petitioner sought to wind up the said Company. The said company failed to repay the outstanding loan together with interest thereon as demanded in the notice.

4. In such circumstances, the first petitioner Bank filed an application in O.A.No.182 of 2011, as against the said Company and the respondent herein, under Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act 1993, which is pending before the Debts Recovery Tribunal-I, Chennai. Pursuant thereto, the respondent, who is the Managing Director of the said Company and second defendant in O.A.No.182 of 2011, pending on the file of the Debts Recovery Tribunal -I , Chennai, filed a private complaint

under section 200 of the Code of Criminal Procedure, 1973, for alleged offence under Sections 500 and 501 of the Indian Penal Code, 1860, before the Learned XIV Metropolitan Magistrate, Egmore, Chennai- 600 008. The Learned XIV Metropolitan Magistrate, Egmore, Chennai, erroneously took cognizance of the said complaint filed by the respondent and issued summons to the petitioner herein. Aggrieved by the same. The petitioners preferred the present Criminal Original Petition before for the aforesaid relief.

5.It was contended by the learned counsel for the petitioners that the first petitioner Bank initiated legal proceedings before the Debt Recovery Tribunal-1 , Chennai, to recover the monies due and payable by the said Company, of which, the respondent herein is the Managing Director, and not to defame or malign the respondent herein. In order to threaten the first petitioner Bank, other Banks/ Financial Institutions, their officials and employees from pursuing the recovery proceedings, the respondent herein filed several complaints before the learned XIV Metropolitan Magistrate, Egmore, Chennai, and in some of the complaints, this Court, granted stay.

6.The learned counsel for the petitioner further submitted that the respondent herein and the said company after having siphoned of huge sums of bank money amounting to more than INR 800 Crores, which is effectively public money form various banks and financial Institutions, including the first petitioner bank, under the guise of availing loans for the business of the said company and thereafter, failed and neglected to repay the loans as promised. Further, due to the indifferent activities of the respondent, the Debts Recovery Tribunal II, Chennai, directed the respondent to deposit his Psssport with the Registrar of the Tribunal, further directed that the respondent should not leave the Country without obtaining prior permission from the Tribunal, which was confirmed by this Court, in W.P.No.19707 of 2011 dated 11th October 2011.

7.The respondent not only suppressed all these facts but also abused the law by filing a frivolous and vexatious private complaint under section 200 of the code of criminal procedure for offences under sections 500 and 501 of the Indian Penal Code, with the sole intention to intimate the bank officials, namely, second and third petitioners herein in pursuing the recovery proceedings against the respondent by lawful means. A plain reading of the private complaint and the documents filed therewith would clearly establish

that no offence as alleged by the respondent is made out as against the petitioners herein and that the private complaint is without any basis, either in law or on facts. Further submitted that the respondent had filed similar complaint against the Bank of Baroda and Financial Institutions almost on the similar grounds. This Court finding the same as vexatious had quashed the complaints. The private complaint filed by the respondent is nothing but an abuse of the process of law and the private complaint ought to be quashed as against the petitioners so as to secure the ends of justice.

8.The learned counsel appearing for the complainant /respondent would submit that the complainant is the promoter of M/s.Subhiksha Trading Services Ltd Company (STSL), incorporated under the provisions of the Companies Act, 1 of 1956. The complainant won several Awards in different categories, for his achievements in the business. The image and public perception of the complainant as the promoter and key Architect of STSL is wholly associated with that of STSL. The complainant is seen as the personal and public face and alter ego of STSL. A1 and A2 along with others have filed a proof affidavit in O.A.No.193 of 2010 at Debt Recovery Tribunal, Chennai, in January 2011, in the said affidavit interalia it is contended that the

respondent obviously siphoned the monies / profit of their business and are trying to not repay its creditors. Further, the respondent approached various financial institutions with a malafide intention to defraud the bank and financial institutions and availed loan to the tune of Rs.800 Crores.

9.It was further contended by the counsel for the respondent that with ulterior motive and malice such averments have been made by the petitioners. There can be no doubt that the averments are not only false but also per se defamatory and made to harm the reputation and defame the complainant, without any evidence. The sentences are deliberately made as though setting out “averments of criminal conduct” in such a manner to maximize the damage inflicted on the complaint. The respondent caused a legal notice dated 27.02.2012 to withdraw the defamatory statement. The petitioner by his reply dated 07.03.2012 has not denied the defamatory statement. It is therefore clear that the petitioners committed an offence punishable under Sections 500 and 501 of I.P.C., and are liable to be punishable. Hence, the learned counsel for the 2nd respondent prays for dismissal of the petition.

10. In respect of the same, he relied on the Hon'ble Apex Court Judgment in the case of *K.S.Panduranga vs. State of Karnataka* reported in 2013(3)SCC 721 and the *State of Uttar Pradesh vs. Synthetics and Chemicals Limited* and various other citations. The learned counsel for the respondents further submitted in the case of *Subramanian Swamy vs. Union of India* reported in 2016 (7) SCC 221, the vires of Section 499 IPC was challenged and in that case, the Apex Court elaborately discussed all aspects in the case of defamation and held that the provisions of Section 499 IPC are constitutional. Further, person, who is claiming the exception, has to prove it.

11. Further, he submitted that what is public good is a question of fact depending on the facts and circumstances of the case. In respect of this contention, he relied on the case of *M.A.Rumugam vs. Kittu* reported in 2009 1 SCC 101. Further, he submitted that where the utterances are *per se* defamatory, there is no need for the complainant to prove that he was defamed. In respect of this contention, he relied on the case of *John Thomas vs. Dr.K.Jagadeesan* reported in 2001 6 SCC 30. Further, he submitted that the averments are unambiguously defamatory. The averments specifically allege "fraud" and "siphoning" both of which are acts of criminal nature and are *per*

se defamatory, requiring no proof of defamation. Further submitted that the DRT is only for recovery of due amount, and there is no manner, in which, DRT could consider or decide any issue of criminal misconduct and as such, the averments were made for the sole purpose of defaming the respondents. Therefore, he prayed for dismissal of the petition.

12.I have heard the learned counsels appearing on either side and perused the materials available on record.

13.This Court, on the rival submissions and on perusal of the materials, finds the availment of financial assistance by the respondent from the petitioner's bank and its default, the loan account becoming NPA, are not in dispute. The petitioner's Bank is a Public Sector Bank, in which, Public money is involved. To safeguard the Bank interest, and to recover the loan, which has become NPA, the second petitioner filed proof affidavit and the Royal Bank of Scotland NV filed an application before the Debt Recovery Tribunal-II, Chennai in O.A.No.182 of 2011.

14.It is seen, in paragraph Nos.21 & 24, passing reference are made:

“21.As regards to para 31 and 32 of the reply statement are concerned, the overall global recession has nothing to do with the business of the defendants. The defendants have obviously siphoned the monies/profit of their business and are trying to not repay its creditors including the appellant.

24. The applicant bank denotes averments made in paras 50 to 60 and further states that the second defendant being the managing director of the 1st defendant with free consent executed the deed of guarantee and further agreed to repay the loan amount and stood as a guarantor for the said facilities. More over the 2nd defendant has not disputed the execution of guarantee; hence he cannot deny his own statement and agreed terms of the contract. It appears that the 2nd defendant approached not only the applicant bank but continued to approach various financial institutions with a malafide intention to defraud the banks and financial institutions and availed loan to the tune of Rs.800 crores. From the averments in para 14 to 32 it further appears that the 2nd defendant approached the financial institutions and misrepresented the banks & financial institutions that they were one of the leading brands in the field of organized retailing all over India. I further state that the second defendant being the promoter of the 1st defendant company, executed the personal guarantee and upon perusal of the application for discharge filed by the 2nd defendant it is clear that the 2nd defendant understood all the contents of the

deed of guarantee and executed the same with free consent and the same cannot be questioned at a later point of time. This shows the malafide intention of the second defendant to try to escape from his liabilities. The alleged loss in the business of the 2nd defendant is only due to the acts of the 2nd defendant and the applicant bank cannot be penalized for the negligence of the defendants and the applicant bank had sanctioned the loan for the bonafide purpose/ development/ promoting the business of the defendants and now public money is in grave danger. The 2nd defendant after acknowledging the liability and executed the deed of guarantee on behalf of the 1st defendant with free consent and at no stretch of imagination it can be stated that the contract is hit by undue influence and the defendants are put to the strict proof of the same these are the cooked up stories of the 2nd defendant and trying to deprive the legitimate dues of this applicant.”

15.The paragraph and the sentence read as a whole, makes it clear and apparent that they are not defamatory.

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16.The respondent admitted that the imputation has caused no harm directly or indirectly in the estimation of others. According to the respondent, imputation are per se defamatory. Hence, the burden to establish such imputation has lowered him in the estimation of the others, which does not

arise in this case. On perusal of the notice, it is seen that there is no mention of any imputation being per se defamatory. In the complaint, no witnesses other than the respondent is shown. Thus, the wording of per se defamatory in the complaint is an after thought, improvement made, while filing the complaint. On the facts of the case and perusal of materials, it is found that no imputation can be said to harm the respondents reputation and Section 499 IPC explanation No.4 squarely applicable in this case.

17.The petitioner filed an application for recovery of Rs.627,525,683.92/-, with future interest @ 20% p.a. before the Debt Recovery Tribunal, the relevant facts, to decide the issue of debt and its recovery, are to be made therein. If these averments are not made in the pleadings before the Debt Recovery Tribunal, the petitioner would not be permitted to plead on that subject orally and lead evidence. As a result, they may not be in a position to succeed in getting the recovery certificate. Therefore, it cannot be stated that these averments are totally unnecessary.

18.This Court finds the petitioner have made averments in the pleadings before the Debt Recovery Tribunal which are very relevant to the issues and

according to the petitioner, it was stated with care and attention. The respondent had not objected for the same before the Debt Recovery Tribunal.

19.As discussed earlier, the averments made in the pleadings have got relevance to the issues involved in the proceedings before the Debt Recovery Tribunal. Hence, it cannot be said that the imputations are per se defamatory.

20.In view of the foregoing discussion, I hold this is not a case where the statements are per se defamatory so as to allow the respondent to go ahead with the prosecution. Hence, continuation of the proceedings further would amount to abuse of process of law.

21.In view of the above, the Criminal Original petition is allowed and the case in C.C.No.2556 of 2013 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai is hereby quashed.

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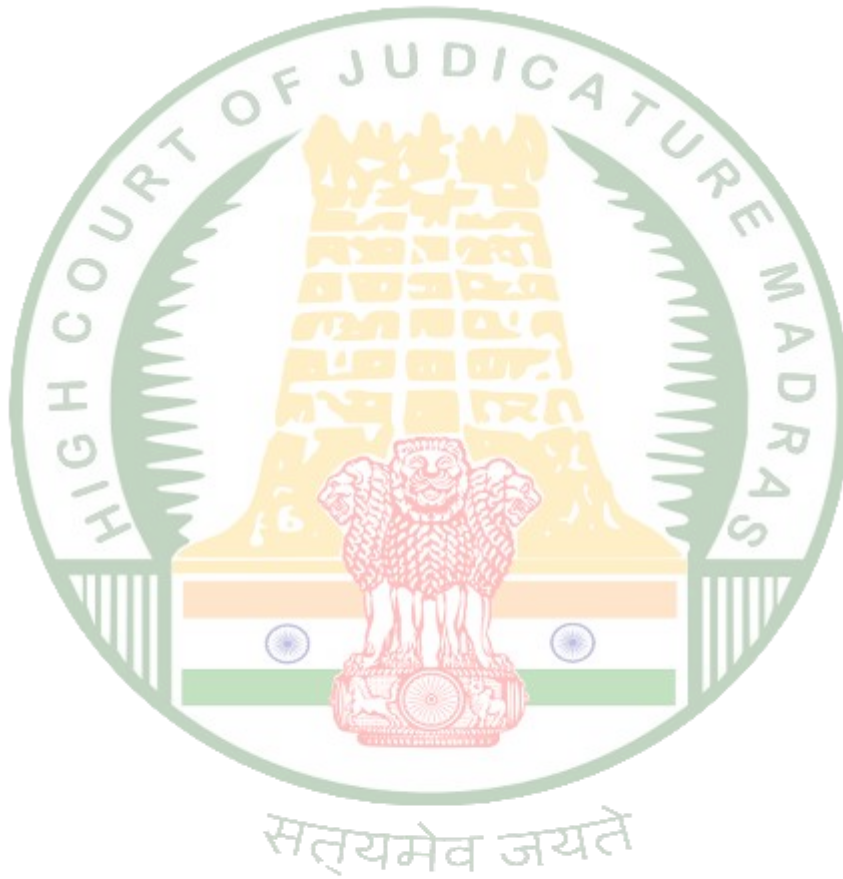
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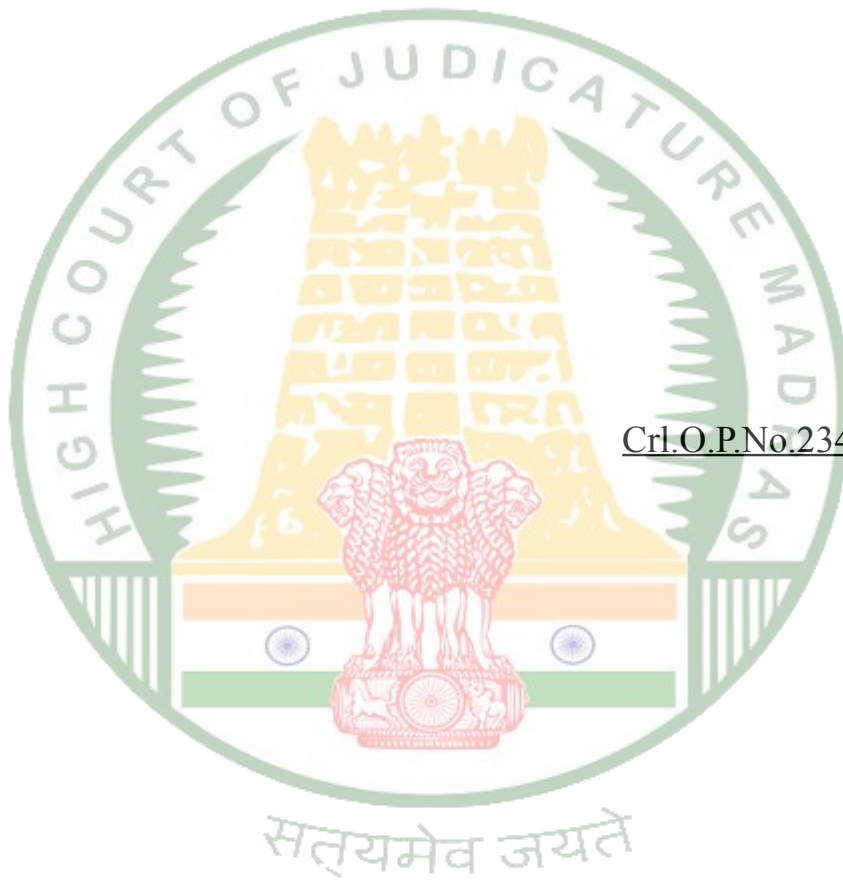
1. The XIV Metropolitan Magistrate,
Egmore, Chennai
2. The Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

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