

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1749 of 2007

P.V. RAJU

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Dipanjan Dutta, Adv. Mr. Ayan Chakraborty, Adv. Ms. Sohini Mukherjee, Adv. Mr. N. Srinivan, Adv.
For the Opposite Parties	: Mr. Ayan Bhattacharyya, Adv. Mr. Somdev Ash, Adv.
Hearing concluded on	: 25 th November, 2022
Judgement on	: 16 th December, 2022

Siddhartha Roy Chowdhury, J.:

1. This is an application under Section 482 of the Criminal Procedure code, 1973 filed by the petitioner for quashment of proceeding being Complaint Case No. C-6423 of 2007 under Section 500 of the Indian Penal Code pending before learned Chief Metropolitan Magistrate, Kolkata.
2. Briefly stated, the petitioner P.V. Raju is the Managing Director of M/s Thermal Systems (Hyderabad) Pvt. Ltd. (hereinafter referred as 'Thermal Systems'). Saud company received order from M/s Kohinoor Steels (P) Ltd. for supply and installation of four numbers of WHRSG at Saraikela, Kharsawan, Jharkhand.

3. Monodipak Roy is the head of Power Division of M/s Kohinoor Steels (P) Ltd. In terms of agreement M/s Thermal Systems had the obligation to submit performance bank guarantee of Rs. 96,90,000/- and together with Form V of IBR in respect of said boilers to be supplied to M/s Kohinoor Steels (P) Ltd. M/s Thermal Systems failed to discharge such obligation in time, the companies traded letters over the issue and ultimately M/s Thermal Systems agreed to deliver the original bank guarantee no. 0505507BG0000511 dated 23rd March, 2007 for the aforesaid amount issued by State Bank of India, T.F.C.P.C, Hyderabad in favour of M/s Kohinoor Steels (P) Ltd. together with a letter of confirmation and original Form V IBR.
4. Mr. P. Sudhakar brought the documents to the office of the M/s Kohinoor Steels (P) Ltd. Mr. Monodipak Roy claimed to have received and acknowledged the receipt of such documents in writing. But to his utter surprise and shock Monodipak Roy was confronted with a letter written by Mr. P. Satyanarayana of M/s Thermal Systems to Mr. Vivek Dugar, Director of M/s Kohinoor Steels (P) Ltd. stating inter alia that Monodipak Roy committed theft in respect of aforesaid documents by removing the same from the custody of Mr. P. Sudhakar. Mr. Dugar directed Mr. Monodipak Roy to explain his alleged conduct. By writing a letter Monodipak Roy emphatically denied all charges made against him. The letter containing the allegation of theft since was sent through Fax and also by E-mail, received and/or opened by the concerned staff of Kohinoor Steels (P) Ltd. dignity and prestige of Monodipak Roy was lowered down in the estimation of his colleagues namely Prabir Ghosh, Arijit Batabyal and Asutosh Majumdar.

Monodipak Roy filed a petition under Section 500 of the I.P.C. for criminal defamation against three persons including the petitioner P.V. Raju who happens to be the Managing Director of Thermal Systems (Hyderabad) Pvt. Ltd. before the learned Chief Metropolitan Magistrate, Kolkata. The petition of complaint was registered as C-6423 of 2007. Learned Chief Metropolitan Magistrate after examining the complainant Monodipak Roy and his witness Mr. Prabir Ghosh was pleased to issue process under Section 500 of the I.P.C. read with Section 499 of I.P.C. against the accused persons by passing an order on 11th April, 2007 which is under challenge.

5. Mr. Dipanjan Dutta, learned Counsel representing the petitioner submits that the purported letter written by Mr. P. Satyanarayana contains a statement of fact made in good faith. The Managing Director did not write the letter and he cannot be held liable for such an act of the Executive Director or any other person. The concept of vicarious liability is alien to an offence within the meaning of the Indian Penal Code. Therefore, learned Chief Judicial Magistrate did not have any reason to issue process upon the petitioner. Learned Trial Court, according to Mr. Dutta, failed to exercise jurisdiction vested upon the Court. It is further contended by Mr. Dutta that in order to attract the ingredients of offence within the meaning of Section 499 of the Indian Penal Code one has to show that imputation directly or indirectly in the estimation of others lowers the moral and intellectual character of that person or lowers credit of that person. But in this case no such ingredient or element is found to justify a proceeding for criminal defamation.

6. Refuting such contention of Mr. Dutta, Mr. Ayan Bhattacharyya, learned Counsel representing the Opposite Party No. 2 makes me go through the pleadings made in the petition under consideration precisely in paragraph 11 wherein it is adverted that “..... Vicarious liability arises only where the company whom the officer represents is also an offender. An officer of a company can be proceeded against, in his individual capacity in the event his action gives rise to commission of an offence. In the instant case, alleged defamatory letter had been written by the accused no. 2, on behalf of M/s Thermal Systems.” According to Mr. Bhattacharyya this statement unerringly suggests that the letter was written by Opposite Party No. 2 on behalf of the company and the petitioner being the Managing Director is the alter ego of the company, therefore, he cannot escape the responsibility as well as liability for committing an offence within the meaning of Section 499 of the I.P.C. To buttress his point Mr. Bhattacharyya relied upon the decision of Hon’ble Supreme Court pronounced in the case of **S.M.S PHARMACEUTICALS LTD. VS. NEETA BHALLA** reported in **(2005) 8 SCC 89** wherein Hon’ble Apex Court held:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under [Section 141](#) of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. [Section 141](#) of the Act contains the requirements for making a person liable

under the said provision. That the respondent falls within the parameters of [Section 141](#) has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within [Section 141](#), he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of [Section 141](#). Even a non-director can be liable under [Section 141](#) of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

7. In response to such submission of Mr. Dutta relied upon another judgement of Hon'ble Supreme Court pronounced in the case of **MAKSUD SAIYED VS. STATE OF GUJARAT** reported in **(2008) 5 SCC 668** wherein Hon'ble Supreme Court held:-

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of [Section 156\(3\)](#) or [Section 200](#) of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian [Penal Code](#) does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said

purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

According to Mr. Dutta the judgement of S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla has been pronounced with reference to Negotiable Instruments Act where there is statutory provision that lumps the Managing Director with criminal liability but there is no such statutory provision to make the Managing Director vicariously liable for the offence within the meaning of Indian Penal Code. Mr. Dutta further draws my attention to another judgement of Hon’ble Apex Court pronounced in the case of **KEKI HORMUSJI GHARDA VS. MEHERVAN RUSTOM IRANI** reported in **(2009) 6 SCC 475** wherein Hon’ble Apex Court held:-

“17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.”

8. According to Mr. Ayan Bhattacharyya, the content of the letter undoubtedly speaks ill of the Opposite Party No. 2. Mr. Monodipak Roy

who was the head of Power Division of Kohinoor Steels (P) Ltd. The content of the letter was made known to his subordinates as well as superior officials purposely by sending it through E-mail and by Fax. The intention of the sender was very clear to make the content known to all working in the office and thus to cause a dent to the reputation of Monodipak Roy. Mr. Bhattacharyya further argues when learned Chief Metropolitan Magistrate, Kolkata after taking cognizance issued process, such order may not be interfered with rather it should be presumed that having found ingredient of offence within the meaning of Section 499 of the I.P.C. learned Chief Metropolitan Magistrate issued process against the petitioner. When prima facie case has been made out against the petitioner, the complaint case may be allowed to reach its logical conclusion after trial.

9. In S.M.S. Pharmaceuticals (supra) the vicarious liability of Managing Director was fixed following the provision of statute. But vicarious liability is alien to Penal Code offences. Hence S.M.S. Pharmaceuticals (supra) is of no help to Mr. Bhattacharyya. Taking lumen from the judgement of Hon'ble Apex Court pronounced in Maksud Saiyed vs. State of Gujarat (supra) and Keki Hormusji (supra), I am of the view that the petitioner cannot be saddled with criminal liability.
10. Admittedly a letter was issued by P. Satyanarayana for Thermal Systems (Hyderabad) Pvt. Ltd. to Kohinoor Steels (P) Ltd. drawing attention of Mr. Vivek Dugar, Director of the said company and in the said letter the author made it clear that that bank guarantee and allied papers were stolen from the bag of P. Sudhakar by Mr. Monodipak Roy

when Mr. Sudhakar kept the bag near the seat of Mr. Roy. It is also admitted that the letter was sent by Fax and E-mail. Mr. Prabir Ghosh is one of the colleagues of Mr. Monodipak Roy who was examined under Section 200 of the Cr.P.C. and in his statement on solemn affirmation Mr. Prabir Ghosh stated that “The allegation is false. By that acts the reputation of our company has been suffered”. Therefore, in the estimation of Mr. Prabir Ghosh reputation of Mr. Monodipak was not lowerd down.

11. It is trite to say that to constitute an offence within the meaning of Section 499 of the I.P.C. there has to be imputation which is the basic requirement and such imputation shall have to be made in the manner as provided in the statute with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made.
12. Upon perusal of statement made by the Opposite Party as Complainant before the learned Chief Judicial Magistrate, I do not find anything to suggest that the petitioner had intended or had reason to believe that letter would harm reputation of Mr. Monodipak Roy the head of Power Division.
13. The criminal offence emphasizes on the intention of harm. Section 44 of the Indian Penal Code defines injury and it denotes any harm whatever legally caused to any person in body, mind, reputation or property. In the absence of any ingredient prima facie to show mens rea of the accused person to have the intention, knowledge or reason to believe that the content of the letter would affect the dignity of a person, an offence within the meaning of Section 499 of the I.P.C.

cannot be said to have been made. The record reveals that Mr. P. Sudhakar informed the Officer-in-charge, Shakespeare Sarani contemporaneously in writing about the alleged incident which further rules out the mens rea of the author of the letter even on behalf of company to cause any harm to the reputation of Mr. Monodipak Roy. Content of the letter is but statement of fact, to be substantiated by the maker which cannot be defamation per se.

14. Under such circumstances, in my opinion, learned Metropolitan Magistrate, Kolkata failed to exercise jurisdiction so vested upon the Court. He did not have any reason to saddle the petitioner with criminal liability for allegedly committing offence within the meaning of Section 499 of the I.P.C. in view of statement of Sri Prabir Ghosh, made during examination under Section 200 Cr.P.C. The proceeding if allowed to continue qua the petitioner it would amount to abuse of process of law. Therefore, invoking the jurisdiction conferred under Section 482 of the Cr.P.C. I am inclined to quash the proceeding.
15. Let a copy of this judgement be sent down to learned Trial Court for information and necessary action.
16. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)