IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2022
DELIVERED ON : 27.05.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.20189 OF 2018
AND
CRL.M.P.NO.10777 OF 2018

Dr.A.Jawahar Palaniappan ...Petitioner / Accused

Versus

P.Varadarajan ...Respondent / Complainant

PRAYER : Criminal Original petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the case in C.C.No.4022 of 2018 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.V.Karthic, Senior Counsel for Mr.V.Adith Narayan

For Respondent : Mr.N.R.Elango, Senior Counsel for Mr.R.Amizhdhu

O R D E R

This Criminal Original Petition is filed to quash the proceedings in C.C.No.4022 of 2018 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner/accused in C.C.No.4022 of 2018 facing trial for the offence under Sections 211 and 500 I.P.C for the private complaint filed by the respondent, has filed this quash petition.

3. The gist of the complaint is that the respondent/complainant filed a private complaint to prosecute the petitioner/accused for having committed offences of criminal defamation, malicious prosecution and having filed false complaint against him before the Inspector of Police, Crime Branch, Chennai and got registered a case in CCB Crime No.196 of 2010 for the offence under Sections 420, 465, 468 and 471 of IPC, which has been closed as “Mistake of Facts”. The complainant is a professional qualified Chemical Engineer with

post-graduation in Printing Technology and Management Science, studied abroad and returned from USA to India in the year 1990 and took over the administration of Kumudam Publications Private Limited (KPPL) and became a shareholder of the company in the year 1990. Later, in the year 2002, the respondent/complainant became the Managing Director of KPPL and later became the Chairman and Managing Director of the company in the year 2003. The respondent/complainant’s position as Chairman and Managing Director was unanimously approved by the Board of Directors and also in the General Body Meetings by suitably amending the articles of association of the company and the resolutions passed on 19.07.2002, 05.03.2003 and 19.03.2003. In all these meetings, the petitioner/accused, as one of the then Director of the company, signed the attendance and participated in the minutes of the meeting. The dispute arose between the petitioner/accused and the respondent/complainant, since it was found that the petitioner though born as an Indian, he acquired USA citizenship and became foreign citizen and now settled in USA. The petitioner being a foreign citizen, he is prohibited to hold shares in a media company incorporated in India. After the demise of his father, the petitioner managed to get the shares of KPPL in his name in collusion with his mother, who was previously the Managing Director of the company. The respondent/complainant advised the petitioner/accused to get legal opinion with regard to holding of shares in print media company incorporated in India and to take necessary remedial measures, since holding of shares by a foreigner would affect the KPPL. The petitioner rejected the respondent's request, on the other hand, he was really interested to sell away the company to political bosses and wind up all the assets of the company and transfer the same to USA, where he is settled. The publication company had reached great height due to the hard work and devotion towards the growth of the company by the respondent. The petitioner settled in USA and Doctor by profession had little time or no time to concentrate on the business of the company and it is known to one and all that it was the respondent, who made the company to reach such zenith in the field of publication. The petitioner with the sole aim to sell out the company to political bosses, went to an extreme step of declaring himself as the proprietor of KPPL Company, which was objected by the respondent. Through his political influence, the petitioner coerced the respondent to sell his shares of the Company and the politician, who are willing to take over the company helped the petitioner to lodge a false complaint against the respondent. On 23.04.2010, a false complaint was lodged by the petitioner to the Inspector of Police, Crime Branch, Chennai, who registered a case in CCB Crime No.196/2010 for the offence under Sections 420, 465, 468 & 471 of IPC and the respondent was arrested. The arrest of the respondent was given wide publicity. The petitioner started giving interviews to the media and issued press release and spoke to the International Telecast of SUN TV and other social media, thereby, maligning the respondent's name, reputation and he was projected as though he had misappropriated and cheated the Company's fund and this telecast was made at the Global level. Not stopping with the same, the mother of the petitioner, wrote letters to many distributors of publications of KPPL maligning name, fame and image of the respondent. The petitioner tried to oust the respondent from the post of Chairman-cum-Managing Director of the Company by all means. Using the registration of the case, the respondent was projected as accused, in various forums and shown litigations, are pending between the respondent and the petitioner. In this case, the CCB Police after investigation of Crime No.196/2010 referred the case as “Mistake of Fact” and closure report was filed on 21.05.2012. Thereafter, protest petition was filed by the petitioner in Crl.M.P.No.4063 of 2012 and after detailed arguments, the same was dismissed on 11.10.2013. Aggrieved against the dismissal order, the petitioner filed a revision petition before this Court in Crl.R.C.No.1483 of 2013. The respondent got himself impleaded as a party in the revision. This Court by order dated 21.04.2014, allowed the revision petition directing the CCB Police to further investigate on the points raised by the petitioner. After further investigation, again the case was closed as “Mistake of Fact” in RCS No.05/RC/CCB/2016 dated 02.02.2016. Again the petitioner filed protest petition in Crl.M.P.No.2543 of 2016. The Special Court for CCB and CBCID, Egmore, Chennai by a detailed order dated 03.10.2017, dismissed the protest petition and closed the case as “Mistake of Fact”. The copy of the order dated 03.10.2017 in Crl.M.P.No.2543 of 2016 was issued and received by the respondent on 05.10.2017. Thereafter, the respondent finding that the petitioner has filed motivated false complaint with false allegations, filed a private complaint dated 21.05.2018, for having filed false criminal cases against the respondent with an intention to cause harm and injury to his reputation. The trial Court received the complaint, examined the respondent, recorded his sworn statement on 21.05.2018 and marked documents as Exs.P1 to P38. Thereafter, on 24.05.2018, The trial Court on a perusal of the materials and evidence, taken cognizance of the offence under Section 211 and 500 I.P.C. and issued summons to the petitioner in C.C.No.4022 of 2018, against which, the present quash petition is filed.

4. The contention of the learned Senior Counsel appearing for the petitioner is that a private complaint filed by the respondent is a counter-blast to a police complaint filed by the petitioner on 21.04.2010 and a case in Crime No.196 of 2010 registered by the CCB Police for offence under Section 420, 465, 468 and 471 of I.P.C. On the registration of the case, the

respondent was arrested and later released on bail on the same day on the ground of ill-health with condition. Thereafter, he filed a relaxation petition and got the condition relaxed. On the influence of the respondent, The Inspector of Police, Central Crime Branch-I, Egmore, Chennai, conducted investigation in perfunctory manner and closed the case as "Mistake of Fact" on 23.05.2012. Thereafter, the petitioner herein challenged the same by filing a protest petition in Crl.M.P.No.4063 of 2012 and the same was dismissed on 11.10.2013. Thereafter, the petitioner filed Crl.R.C.No.1483 of 2013 before this Court. This Court by a detailed order dated 21.04.2014, directed the Chief Metropolitan Magistrate, Egmore to direct the Inspector of Police, Central Crime Branch-I, Egmore, Chennai to conduct further investigation by forming different teams and also to verify the documents submitted, more specifically with regard to the insertion of the word "ten lacs" in the resolution dated 10.01.2007 and for the misappropriation and enhancement of remuneration of 95% for the respondent herein. Two specific points were determined to be looked into, namely, insertion of "ten lacs" and the signature of the respondent/complainant to be verified in the three resolutions dated 10.01.2007, 25.04.2007 amd 24.12.2007. Further, to investigate with regard to the purchase of LED panel board from M/s.Tricom Visions for Rs.3.13 crores. Thereafter, the Crime Branch conducted further investigation without examining any independent witness of Kumudam Publications Accounts Department staff, concerned Auditors and Company Secretaries. Petitioner's repeated request for examining witnesses were not considered and once again the case was closed as "Mistake of Fact" and closure report was submitted on 02.02.2016 before the trial Court. Aggrieved against the closure report, the petitioner filed a protest petition in Crl.M.P.No.2543 of 2016 and the same was dismissed on 03.10.2017, against which, the petitioner preferred a revision in Crl.R.C.No.666 of 2018 before this Court. The revision petition was filed on 03.01.2018. The respondent/complainant, though aware of Crl.R.C.No.666 of 2018, filed the above private complaint on 21.05.2018, on the same day of complaint, sworn statement recorded, 38 documents marked and within 3 days thereafter, i.e. On 24.05.2018, cognizance taken in C.C.No.4022 of 2018. He further submitted that in the complaint, which was filed 5 months after the filing of the criminal revision, there is no whisper about the pendency of Crl.R.C.No.666 of 2018 before this Court. Further, in the 38 documents, the last document ends as of 03.10.2017, to project as though nothing happened after 03.10.2017 till filing of the complaint on 21.05.2018. The respondent not approached the lower Court with clear hands. Had the lower Court informed, the pendency of Crl.R.C.No.666 of 2018, it might not have taken the case on file. In Crl.R.C.No.666 of 2018 both the learned Senior Counsels, appearing for the petitioner and the respondent herein had appeared and this Court by order dated 15.03.2019, elaborately discussed and found that neither the Auditors nor any employee of the Accounts Department of the Company examined, the learned Metropolitan Magistrate failed to consider the allegation levelled by the petitioner herein and ultimately allowed the revision petition by setting aside the order passed in Crl.M.P.No.2543 of 2016 dated 03.10.2017 and directed the CCB Police to conduct further investigation in the case. In view of the above, the proceedings in Crime No.196 of 2010, not reached its logical end. The main allegation of the private complaint is that a false complaint lodged against the respondent and a case in Crime No.196 of 2010 registered at the instance of the petitioner, is not proper and cannot sustain. He further submitted that the Lower Court committed, grave mistake by taking cognizance for offence under Section 211 of I.P.C. As per Section 195 of Cr.P.C. it is to be seen that there is a bar and no private complaint can be filed for offence under Section 211 I.P.C. He further submitted that the respondent committed misappropriation and cheating to the tune of several crores. It is an admitted fact that the Kumudam Magazine was founded in the year 1947 by the family members of the petitioner. The father of the petitioner, invested huge amount to start Kumudam Magazine, out of his ancestral properties and incomes and with great effort. His father was a sole proprietor of the Magazine. The father of the respondent, namely, Mr.P.V.Parthasarathy worked as a Manager with the petitioner’s father and later as Publisher. After the period of elders, the petitioner gave opportunity to the respondent to work in Kumudam just like his father, considering the long standing friendship and loyalty of his father. Thereafter, on the request of the respondent some shares were allotted to his family. The respondent started a company named Imprint Tech India Private Limited, in which, his family members are the Directors. The majority of the shares in Kumudam Publications Pvt. Ltd. is held by the petitioner, which is approximately, 2/3rd of the total shares. The other shares are held by the petitioner’s mother and Imprint Tech India Pvt. Ltd. The respondent was made, in-charge by the petitioner for looking after and administering the Kumudam Publications Pvt. Ltd. His salary was fixed for Rs.6.25 lakhs on 30.05.2006 and the same was approved by Board of Directors. However, later the resolution showed that the respondent, forged the last sentence of the resolution by inserting denomination of the salary as Rs.10 lakhs. The respondent being the Managing Director, who had access to the files under his custody, controlling the functioning of the company, in a deceitful manner cheated the petitioner. Several of the accounts of the company had been tampered with, Kumudam Publications Pvt. Ltd., which was making reasonable profits so far every year, started making loss for the accounting year 31.03.2009 and Rs.37 lakhs shown as loss. On the other hand, the respondent was taking an exorbitant unsanctioned salary of Rs.3 crores 34 lakhs. In fact Kumudam itself borrowed heavily from a Nationalised Bank, for which, the petitioner, gave his personal properties as collateral security. The accounts were falsified to facilitate the respondent to commit all his misdeeds. Further, there was tampering of accounts, in purchase of machineries, media, papers, etc. The petitioner objected all these transactions and not approved the accounts. Thus, roughly around 25 crores of the Company funds misappropriated. During the investigation several of the other misdeeds unearthed. The respondent became furious, entered into a Memorandum of Understanding dated 15.08.2010 and the MOU to be further confirmed by way of final agreement. All shares of the respondent to be transferred to the petitioner in total after appropriate valuation, and this is to be done within 60 days from the date of MOU and thereafter all the issues both civil and criminal between them to be given quietus and the final agreement to be concluded within 60 days. Taking advantage of the same, the respondent racked up other issues projecting as though the petitioner purchased the shares in a Media Company against the Government norms and prohibition, since the accused acquired USA citizenship, paid for the purchase of shares. Complaints were lodged with RBI, Enforcement and other authorities. The Income Tax department disallowed certain expenditure and levied penalty. There had been filing of civil suits before the City Civil Court, High Court and National Company Law Tribunal. Due to the respondent’s complaint, adjudication was faced by the petitioner before the Enforcement and RBI and for FEMA violation. In the meanwhile, the respondent projected as though all the expenditures and withdrawals by him was with the approval of the petitioner, which is the issue to be investigated in Crime No.196 of 2010. Now, the National Company Law Tribunal in TCP No.26 of 2018 had given a finding in favour of the petitioner, whereby the status and shareholding of the petitioner restored and further found there is no violation of any FEMA or RBI guidelines and the proceedings initiated against the petitioner by Enforcement and RBI authorities have now come to an end. As regards the misappropriation and cheating, these criminal aspects prosecuted by the petitioner is recorded. Be that as it may. From the above factual aspects and proceedings it is seen that lodging of the complaint to the Police, which is still pending investigation cannot be termed as defamatory and hence, the above case to be quashed.

5. The learned Senior Counsel appearing for the respondent submitted that the petitioner lodged a false complaint in Crime No.196 of 2010. The respondent was arrested and wide publicity was given in various media. It is an admitted fact that the respondent was the Chairman and Managing Director of the Kumudam Publications Pvt. Ltd., who was taking care and the man behind the success and in effective running of the Company from the

year 1990. He has been the heart and soul for the growth of Kumudam Publications. It is an admitted fact, the petitioner is a Doctor by profession and Cardiologist, who is settled in USA for years together and he is busy with his profession. He used to visit India to attend the meetings and nothing more. It is the respondent, who was taking care of the Company right from the year 1990. Considering his sincere, hard work, he was made as Chairman and Managing Director of the Company in the year 2003. From 2003, he is striving for excellence and success of Kumudam Publications. He also ventured and started other magazines in the name of "Kumudam Reporter", "Snehidhi", etc. The phenomenal growth of the respondent was unable to be digested, further, the respondent was identified as the man behind Kumudam Publications, though the petitioner's family members were having major shares. The respondent finding legal entanglement against the petitioner, in holding major shares in Media and Publication industry as per the Government norms and restrictions, advised him to return back the shares. The petitioner now well settled in USA having no bondage, devotion or sentiments with the Kumudam Publications, without the knowledge of the respondent, was dealing with the political bosses and tried to hand over the company to political bosses, which was resisted by the respondent, hence, a false complaint lodged and thereafter, on the same day of the complaint, the respondent was arrested. His arrest was given wide publicity both in visual, print and social media, further live telecast in SUN TV. Due to world wide telecast in SUN TV, his image, reputation and status in the society gone down. Several of his friends, employees and well wishers called him and enquired about the same. After his arrest, he was granted bail on the same day with the condition to produce the relevant documents to the CCB Police, Egmore. Thereafter, the case was closed as "Mistake of Fact". Thereafter, protest petition filed by the petitioner was also dismissed. This Court in Crl.R.C.No.1483 of 2013 gave direction to verify the signature of the petitioner in the three resolutions dated 10.01.2007, 25.04.2007 and 24.12.2007 and for the other allegations, the signatures were sent to Forensic examination. The handwriting expert confirmed that the signatures found in the resolutions is that of the petitioner and thereafter, again the case was closed as "Mistake of Fact". Again protest petition was filed in Crl.M.P.No.2543 of 2016 and the same was dismissed by order dated 03.10.2017. The trial Court elaborate detailed order is self explanatory. It confirmed that the petitioner lodged a false complaint against the respondent. A perusal of the sworn statement would confirm that in the sworn statement of the respondent, offences clearly narrated with supporting documents, Exs.P1 to P38 marked. Thereafter only cognizance of the case taken, which cannot be termed inappropriate. As on the date of lodging of the private complaint i.e. on 21.05.2018 the respondent was not aware of the

Criminal Revision Case in Crl.R.C.No.666 of 2018. The points raised by the petitioner are factual to be decided during trial and not in the quash petition. Hence, prayed for dismissal of the petition.

6. Heard the learned Senior Counsels appearing on either side and perused the materials placed before this Court.

7. Considering the submissions and on a perusal of the materials, it is not in dispute, the petitioner and the respondent were Directors of Kumudam Publications Private Limited. The petitioner’s father is the forerunner and founder of the Kumudam Publications Pvt. Ltd., in the year, 1947. Thereafter, it has grown into leaps and bounds. Initially it was a proprietorship Firm. The respondent’s father, Mr.P.V.Parthasarathy worked as Manager with the petitioner’s father. Due to the bondage between them, the respondent's father was well placed and treated with respect. This bondage and respect passed on to the next generation, i.e. the petitioner and the respondent. The petitioner a Doctor by profession, a reputed Cardiologist in USA and now settled in USA, acquired US citizenship. The respondent joined the Kumudam Publications in the year 1990, rose to the level of Managing Director in the year 2002 and as Chairman and Managing Director in the year 2003. Considering the long association and bondage, the petitioner allotted 1/3rd share of the Company to the respondent, which is not in dispute. The payment or otherwise what was the agreement and what was the consideration, is a matter to be decided. It is not in dispute that 66.61% of share was held by the petitioner and his family and 33.39% by Imprint Tech India Pvt. Ltd., in which, the respondent’s family members are directors. Thereafter, dispute arose between them and on scrutiny of accounts, some doubts arose and later it was found that there was misappropriation and siphoning of funds, which was not agreeable to the petitioner and hence, he lodged a police complaint. Following the same statutory authorities initiated action against the petitioner, civil suits filed. On considering their long association, a Memorandum of Understanding entered between them on 15.08.2010 and the intention was to resolve the issue within 60 days. Thereafter, due to respondent attitude and activities the issue could not be resolved, subsequent complaints made, enquiry commenced by statutory authorities, and proceedings initiated before the NCLT and civil suits filed. The National Company Law Tribunal in TCP No.26 of 2018 gave a finding in favour of the petitioner. The claim and counter claim are to be decided in the civil suit. As regards the misappropriation, cheating and other criminal aspects, the petitioner reserves his right, and not agitated before any other forum. It is not in dispute Crime No.196 of 2010, proceedings are still pending. In lodging a complaint

against the offenders cannot be termed as a defamation, though the investigation might be dropped or closed for various reasons. Added to it, this Court finds that the trial Court taking cognizance for offence under Section 211 I.P.C. is barred by Section 195 Cr.P.C., the alacrity shown by the trial Court in receiving the complaint, on the same day, recording the sworn statement, taking the complaint on file within 3 days is not the normal course. In this case, except for the statement of the respondent no other witnesses examined, though in general, it is averred several persons enquired, the respondent about the criminal case against him, including his relatives and friends, none examined to substantiate and corroborate the respondent version, no particulars available in the complaint. The Crime No.196 of 2010 is still pending, on a demurer considering the complaint false and motivated, to cast imputation against the name and fame of respondent. There is nothing to show the imputation caused harm to the reputation of the respondent directly or indirectly in the estimation of others.

8. Thus looking the case from any angle, this Court finds no justification or reason to continue proceedings in C.C.No.4022 of 2018, further continuation would only amount to abuse of process of law. Hence, the proceedings against the petitioner in C.C.No.4022 of 2018 pending before the learned II Metropolitan Magistrate, Egmore, Chennai, is hereby quashed.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

rsi

To

The II Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.Adith Narayan, Advocate, Sr.No.31869

+2ccs to Mr.R.Amizhdhu, Advocate, Sr.No.31900

+1cc to Mr.K.P.Anantha Krishnan, Advocate Sr.No.31907

Crl.O.P.No.20189 of 2018

KJ(CO)
RVM(30/06/2022)