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

% **Reserved on: 20th September, 2022**
Pronounced on: 26th September, 2022

\+ **CRL.M.C. 1235/2021& CRL M.A. No.6248/2021, 8152/2022**

MANIKANDAN B ..... Petitioner
Through: Mr.Nalin Kohli, Mr.Ankit Roy, Ms.Nimisha Menon, MrAstik Dhingra, Advocates.

versus

PAVAN GAUR ..... Respondent
Through: Ms.Neelima Tripathi, Senior Advocate with Mr.Mandeep Singh Vinayak, Ms.Gunjan Singh, Ms.Soumya Sharma, Advocates..

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed with the following prayers:

> *" a. Quash the summoning order dated 03.10.2020 passed by the Ld.Metropolitan Magistrate - 02, South, Saket District Court in CC No.12501/2018;*
> *b. Quash the CC No.12501/2018 filed by the Respondent herein for the alleged offences U/S 499/500 Indian Penal Code, 1860, pending before the Saket District Court;*
> *c. Pass any such other order(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case."*

2. It is argued by the learned counsel for the petitioner vide impugned order dated 03.10.2020, the learned Magistrate has summoned the petitioner under Section *500* IPC but the complaint is nothing but a mean

to wreck *personal vengeance* on the petitioner with an intention to use it as an instrument of *harassment*, *oppression* and *vendetta* to harass him.

3. It is alleged the respondent was appointed as a Chief Executive Officer in Schneider Prototyping India Private Limited (hereinafter referred as *SPIN*) from *2012* to June *2018* and has misused his position; falsified the books of account; made false entries and has misappropriated substantial amount of money from SPIN, the company in which he was employed. He was in-charge of the day-to-day operations of SPIN at the helm of affairs and he left it in deep financial distress. '*SPIN*' subsequently to ascertain the manner in which the respondent had committed misappropriation/ siphoning of funds, carried out an extensive forensic audit and an audit report '*Special Investigation Audit Report*' dated 25.09.2019 show *misappropriation and siphoning of funds* done by the respondent to an extent of Rs.*21,34,44,127* and the same is recoverable. CS (OS) No.*92/2020* is also filed against the respondent herein. The said suit was closed later. Further, FIR No.819/2018 dated 14.11.2018 is also registered against the respondent under Section *406, 420* IPC at police station Phase-II, District Gautam Budh Nagar, Noida wherein charge sheet under Section *406/420* IPC is filed. It is alleged the complaint is filed only to harass the petitioner.

4. The learned counsel referred to *Subramanian Swamy vs. Union of India* (2016) 7 SCC 221 wherein it was held:-

> *207. xxx At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and*

> *maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance.*

5. In *Rajib Ranjan vs R. Vijaykumar (2015)* 1 SCC 513 it was held:-

> *"46. The court must ensure that* ***criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.*** *On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."*

6. In *S.Khushboo vs Kanniammal* (2010) 5 SCC 600 it was held:-

> *34. xxxxxx*
> *The definition makes it amply clear that the accused must either* ***intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm****. Explanation 2 to Section 499 further states that `It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.'*

7. In *Standard Chartered Bank vs. Vinay Kumar Sood* (2009) 108 DRJ 709 it was held:-

> *16. Mens Rea; a mandatory pre-requisite of an offence of defamation is clearly missing in the said communication. This* ***communication made bonafidely*** *by the petitioner* ***bank upon the subject matter contained therein, in which the petitioner had an interest or it had the duty to*** *correspond with the complainant asking him to clear the dues under the circumstances would be privileged and would attract exception 9th Petitioner bank had no reason to lower the dignity and character of the complainant in the eyes of anyone. The bank was not reckless in sending this telegram to the complainant. The complainant upon responding to the correspondence though denied his*

liability to pay the amount having no concern with the card in question as he never held the said card in his name. ***Action of the bank was in good faith as also in public good as the entire process of correspondence with the complainant was with a view to protect the public money safely invested with the bank and found due from the complainant (as per the bank's record) was repaid.***

8. Thus it is argued the complaint be dismissed against this petitioner for reasons aforesaid. It is argued the communication by the petitioner does not contain any imputation with an intention to cause harm or was allegedly made with such knowledge or belief that it will harm the reputation of complainant. It is argued the intention to cause harm is a *sine-quo-non* for constituting an offence under Section *499* IPC. It is submitted the act of the respondent rather is to harass the petitioner.

9. Heard.

10. The respondent/complainant has filed a complaint case under Section *499/500* IPC wherein he allege he is a highly qualified engineer and an expert in the field of prototyping. He was approached by the promotors of the Schneider Prototyping Company, Germany to set up a manufacturing set up in India in the year 2012. From April 2012 till June 2018, respondent was appointed as CEO and he assisted in start of the company and making it into a leading and profitable prototyping company in India. On account of differences in operations of the company and non-payment of his dues, the respondent resigned on 07.06.2018. His resignation was accepted and it was informed the petitioner herein, the then General Manager, would do his full and final settlement, which allegedly has not been done. The respondent filed an application at NCLT as an Operational Creditor for recovery of Rs.*17.54*

Crores. It is submitted this prototyping industry, the world over, involves very small number of skilled manpower, suppliers and customers. Since respondent has commenced business of his own and is dealing with the same people who had business dealings or had claims against Schneider, such communications are *damaging to his reputation and business*.

11. In following paras of his complaint, he alleged:

> *"10. The Complainant also makes specific reference to the accusations and false allegations made by Accused No .4, Mr. Peter Laser, who has claimed to be a consultant and acting as the interim- CEO of the First Accused company. He has specifically stated, that the "present crisis is a consequence of the past management". He has also been holding one on one meetings with the employees of the First Accused Company, urging them to affirm that the Complainant has been involved in misappropriation. He has also Stated to the employees in these one on one meetings (with a translator at times) that the Current financial crisis that the first accused is facing, and its pathetic situation is a result of the past management . He has also communicated with the landlord of the first accused company's Noida premises, stating clearly that if he had been the CEO, the situation would have been different. It would not be incorrect to state therefore, that he has been directly and concertedly attempting to influence people against the Complainant. Some documents evidencing the same are annexed herewith and marked Annexure C-7 (Colly). The same were forwarded to the Complainant by the landlord of the Noida premises.* ***Both, the accused nos. 4 and 5 have also been jointly 11. communicating to various customers of the first accused company that the 'past management ' had misappropriated funds, and was asked to leave the organization, whereas the truth is entirely different.*** *A true copy of one such interaction between the accused no. 2 and one of the most prominent Chinese suppliers, which the Complainant obtained from an employee of the First Accused company after it was circulated, is annexed herewith and marked as Annexure C- 8. Set out below are the relevant contents of the said interaction through which the accused no. 2 attempted to falsely implicate the*

Complainant as having acted in an unprofessional underhand manner :
"No payment out of India possible until we resolve, the issue with bank Likely that pavan made friends or paid bank manager...."

12. The accused no.5, Mr Manikandan B, General Manager Administration with the first accused had been exchanging prolific whats App messages with the other accused, defaming the Complainant. He initially mailed the defamatory messages to the Complainant but later, ***started showing these messages to employees of the first accused Company*** *in order to induce them to think negatively of the Complainant. He has also been holding one on one* ***meetings in Puducherry with the employees, and making wild and acutely defamatory allegations of siphoning off money against the Complainant****. A true copy of the mail that had sent to the Complainant containing the defamatory messages of accuses No. 2 is annexed herewith and marked as Annexure C - 9. It is pertinent that the accused no. 6 has also been circulating these messages among other employees of the first accused company in a bid to defame the Complainant and lower his stature and standing.*
13. The accused no. ***5*** *has also been writing to the Complainant vide text messages and stating that,*

> ***"The final number comes around 19cr as per our books from 2012 .***
> ***But 2017 alone 6 Cr. Still I can't believe this."***

A snapshot of this message is annexed herewith and marked as Annexure C-10. This and similar messages are being shown to the employees of the organization to defame the complainant, and insinuate that he had been misappropriating funds from the first accused company to this extent.
14. The Complainant stales that the excerpts from the communications set out above are merely representative, and are an example of what the accused have been writing. Further that the effect that this defamatory smear campaign is intended have, is one of destruction, sabotage and negativity of the worst kind against the future business prospects of the Complainant. To this end, the accused have been writing scurrilous defamatory and utterly libelous communications to the peers and erstwhile colleagues and the potential business contacts of the Complainant. Their malicious campaign of slander and calumny has had the effect of considerably diminishing the

Complainant' s reputation of excellence and integrity. The Complainant states that for a person of his stature, and for a person with large commercial interest, such a defamatory campaign can be extremely damaging, All the Accused have, actively connived with each other and conspired together, in committing the actions complained of.

12. I may also refer to *whatsapp messages* sent by petitioners to each other**;** to the respondent and to the employees of the company. The said messages are:

> *"[5/ 23 12.43] Dr. Topf : Mani, we checked the papers now. There is no doubt in my mind that pavan* ***stole about 1,000,000 euro*** *from schneider, India.*
> *[5/ 23 12.46] Dr. Topf : At least now we know why we have no money* ***Pavan Stole it****.*
>
> *Good Morning,*
> *The final number comes around 19 cr. as per our books from 2012. But 2017 alone 6 Cr. still I can't believe this.."*

13. The alleged defamatory contents are in the messages Annexure *C-8 to C-10* to the complaint. It is alleged a conversation dated 23.05.2018 between the petitioner and Dr.Topf would reveal a conspiracy being hatched against the respondent and though the conversation show the petitioner is trying to tender his resignation; but eventually he did not resign but was promoted as Chief Operating Officer of the company.

14. The opinion shared on *whatsapp* with the respondent, *admittedly* was also shared with the *employees of the company*. Reference is made to various emails sent to employees of the company, *see* page nos.*127-130* of the paper book. Thus the argument these emails were between *two* persons is wholly incorrect. The summoning order more specifically para *5*, take note of such communications, sent to employees, as under:

> *5. The complainant has specifically relied upon various emails and whatsapp conversations (Ex. CW1/E to Ex.*

> *CW1/H) allegedly defamatory in nature. Perusal of record reveals that Ex. CW1/E is an email dated 15.06.2018 sent by alleged no. 2 describing the complainant as a person with 'criminal intent' in the eyes of his potential business associate. Ex. CW1/F is an email by alleged no. 4* ***to all employees*** *of Schneider Prototying India Pvt Ltd. alleged to be defamatory in nature referring to complainant having a 'track record of bankrupting enterprises'. Further, Ex. CW1/H is a true printout of whatsapp conversation between alleged no. 2 and 5 which was forwarded by alleged no.5 to the complainant stating that complainant has 'stolen one million euros from the company'."*

15. Thus, the assertion made by the petitioner that he has merely reported the fact which are accurate and cannot be held defamatory, cannot be accepted at this stage. Such assertions and who is responsible for making it, require examination and hence evidence on these issues is required. The ingredients of Section *499* IPC says imputation with intent/knowledge to harm reputation; published in any form including *whatsapp*, are punishable and in case the petitioner seek protection of an exception under Section *499* IPC, such stage is *yet to come*. Meaning thereby the assertion of the petitioner viz. the audit report dated 25.09.2019 shows misappropriation and siphoning of funds by the complainant all require examination, hence, would not be relevant at this stage. The conduct of the petitioner of sharing above information with employees of the company and its customers, *prima facie* would harm/damage the reputation of the complainant/respondent, hence the proceedings before the learned Trial Court cannot be closed at this stage. At this stage it cannot be said compliant is vexatious or frivolous.

16. In *P.S.Meherhomji vs. K.T.Vijay Kumar* 2015(1) SCC 788, the Court held as under:

> *"15. Xxxxxxx*
> ***The complaint has to be read as a whole.** If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the **offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference by the High Court.***

17. In *Mohinder Singh Saluja vs. Vanson Shoes* 1987 (31) DLT 189, the Court held as under:

> *"xxxxxxx*
> ***Furthermore, the learned lower court was not required to write down the detailed reasons to come to such a conclusion as to whether prima facie the case for summoning of the accused is made out or not**. xxx The purpose of the law will be quite satisfied if it **can be gathered from the record of the case that he applied his mind to the material contemplated by the section 200 or section 202 of the Criminal Procedure Code** (1898) as the case may be, and formed and opinion as to the existence of sufficient ground for proceeding on its basis. **There is no requirement of the law for a speaking order analysing the evidence adduced by the complainant or making evident how his mind worked so as to lead him to issue of process."***

18. In *Ganesh Narayan Hegde vs. S.Bangarappa and Ors.* 1995 (4) SCC 41, the Court held as under:

> *"12.While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the **High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers**. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. **The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges.***

19. Further in *John Thomas vs. Dr.K.Jagadeesan* 2001 (6) SCC 30, the Court held as under:

> *"10. **xxxxx However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant cannot contend, at this stage, that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory.**"*

20. Further in *Jeffrey J. Diermeier and Ors. vs. State of West Bengal and Ors.* 2010 (6) SCC 243, the Court held as under:

> *"40. xxxxxx **Similarly, it will neither be possible nor appropriate for this Court to comment on the allegations levelled by respondent No.2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties.**"*

21. The cases referred to by the petitioner viz. in *Standard Chartered Bank* (supra), the FIR was quashed only against the Bank but not against the individuals and whereas in *S.Khushboo* (supra) the submissions were general in nature and not specific. Further *Rajiv Ranjan* (supra) is clearly distinguishable from the facts of the present case. The dispute was purely civil in nature and it was a case of evidence of concocted documents to create a false criminal complaint. In the present case the communications have not been denied. It was rather noted the power under Section 482 Cr.P.C. must be exercised *sparingly, carefully and with caution only when such exercise is justified*. Secondly, upon the alleged ground of personal and private grudge the petitioner had failed to show any

document or grounds before this Court. The petitioner has though alleged the complaint was filed as a counterblast but the respondent's complaint *12501/2018* was filed first and subsequently, the petitioner had filed some complaints. *Subramanian Swamy* (supra) is also not applicable to the case since it discusses, weighs and finally holds that '*reputation*' guaranteed under Article *21* of the Constitution is a reasonable restriction on freedom of speech under Article *19* of the Constitution and such reputation should not be sullied at the altar of other's right to free speech and expression.

22. In view of the above, the petition has no merit and is accordingly dismissed. Pending application(s), also stands disposed of.

YOGESH KHANNA, J.

SEPTEMBER 26, 2022

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