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Crl.O.P.No.10160 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.10160 of 2009
and M.P.No.1 of 2009

1. A.R.Lakshmi
2. B.Ramamoorthy
3. R.Muthukrishnan
4. R.Ragunandan
5. R.Sudha
6. R.Shanthi

...Petitioners

-Vs-

S.Neelakantan

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the entire proceedings in C.C.No.4595 of 2009 in the file of XVII M.M, Saidapet, Chennai.

For Petitioners : No appearance

For Respondent : Mr.C.D.Johnson

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4595 of 2009, on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.



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2. The respondent filed a complaint under Sections 499 and 500 of IPC. The crux of the complaint is that the respondent is practicing as an Chartered Accountant. He is a partner of M/s C.N.G.S.N and Associates. He is carrying work in accordance with the regulations of the Council. While being so, in the year 2005, one M/s Ozone Projects Pvt. Ltd of Bangalore approached the complainant's firm for advise on relevant issues for acquiring 40 acre property in Anna Nagar, Chennai, identified by them for acquisition. For preparing the report, the complainant held discussions with various parties who were owning the lands identified by the client and also with the respective lawyers. Out of the total extent of about 40 acres, 34.04 acres belonged to M/s Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd, which was represented by one A.R.Santhanakrishnan and A.K.Muthuswamy, who are close blood relatives of the accused. The complainant studied the documents and best of his ability, he had prepared a project and gave it to his client. The accused are minority shareholders in M/s. Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd and they have some grievance with the majority shareholders pursuant to which, they started litigating with them. Therefore, the complainant has nothing to do with the accused. However,



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the accused have been recklessly engaging in malicious propaganda and libelous defamation against the complainant with the intention to put spokes in the deal, so that they can achieve through back door what they cannot achieve through the lawful front door. The fourth accused viz., R.Raghunandan, lodged a complaint before the Institute of Chartered Accountants of India against the complainant. Though there is no professional relationship between the fourth accused and the defacto complainant, he lodged a false complaint.

3. The accused also have purposefully caused legal notice dated 12.02.2009 alleging that the complainant is acting as a Real Estate and Finance agent in respect of the captioned disputed property detrimental to them financial and ownership interest when the entire matter is subjudice now in C.P.No.2 of 2006 in the Company law Board and suit in C.S.No.490 of 2008 before this Court, in respect of title and ownership. Hence, the complaint.

4. On perusal of records and after recording the sworn statement, the Trial Court had taken cognizance for the offences under Sections 499



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and 500 of IPC as against the accused and issued summons.

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5. There are totally six accused, in which the petitioners are arrayed as A1 to A6. A1 and A2 died. Therefore, the charges under Sections 499 and 500 of IPC as against A1 and A2 is abated. Though the accused have not appeared before this Court, today, on perusal of the complaint and documents, this Court is inclined to pass orders on merits.

6. The learned counsel for the respondent would submit that there are materials to attract the offences under Sections 499 of IPC. The accused issued legal notice dated 12.02.2009 and called the respondent and land broker. The respondent is a Chartered Accountant by profession. That apart, the accused have purposefully sent a copy of the notice to his partnership firm M/s.C.N.G.S.N and Associates with the sole intention of bringing it to the attention of other partners, juniors and staff in the firm. On receipt of the said notice, other partners conducted a meeting with the complainant and questioned about the allegations found therein. Therefore, the partners developed a wrong opinion about the complainant on the notice with defamation allegations. The copy of the notice was also sent to his client and its investor HDFC Limited. They



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also questioned the defacto complainant. He further submitted that the fourth accused is none other than his competitor, since he is also a Chartered Accountant, in order to wreck vengeance by profession, the accused caused legal notice.

7. There is no representation on behalf of the petitioners. Heard the learned counsel for the respondent and perused the materials available on record.

8. There are totally six accused, in which the petitioners are arrayed as A1 to A6. Even according to the respondent, the accused caused legal notice dated 12.02.2009. It is relevant to extract the portion of the legal notice dated 12.02.2009 hereunder:-

"that you are acting as a Real Estate and Finance agent in respect of the captioned disputed property detrimental to my clients financial and ownership interest when the entire matter is "subjudice" now in CP.No.2/2006 in the Company law Board and Declaration Suit C.S.No.490/2008 in the High Court of Madras, where the title and ownership of this huge family property is the main subject matter of the dispute / case and that no third party interest can be created in this property. My clients put you on notice that under the Chartered Accountants Act and its code of conduct you are forbidden to do so.



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My clients strongly object and disapprove of your business conduct and practices, while legally you are taking shelter under professional secrecy clause unwilling to part even with the Diligence report pertaining to my clients family property, the matter which is subjudice in Delhi High Court, but indulging in speculative operation of my clients family property.

My clients are also shocked beyond words to note that while the whole matter is subjudice presently, you are constantly visiting the site with unknown strangers under the garb of inspection and representing your client M/s. Ozone Group and its Managing Director Mr.S.Vasudevan. Your conduct is reprehensible, particularly when CMDA had even objected in putting up temporary structure or running even office administration which you are well aware off till the dispute is resolved legally/officially. My clients put you on notice that the consequences of such unethical business conduct will be entirely yours.

It has also been brought to the notice of my clients that you are negotiating in raising of funds / capital of this disputed family property with Banks/Financial Institutions and other equity promoters of M/s. Ozone Projects Pvt. Ltd under the garb of factoring a transaction while my clients strongly believe that your real intention is to crease the loan/ encumber the property further and fish in troubled waters, rocking the ship its doom, trying to have a final edge over litigation at the expenses of my clients family Company/Members/ Shareholders.

My clients place on record that majority shareholders of my family barring one or two directors are strongly disapproving of your unethical strategy and my clients reserve the right to keep the concerned Banks / Financial Institutions fully informed of the real legal disputed status of my clients family property and your business role in the entire transaction in trying to create more charge/lien/encumbrance on the litigation ravaged family property.”

9. It revealed that the respondent's clients approached him for



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advise on relevant issues for acquiring a property to an extent of 40 acre in Anna Nagar, Chennai. On the said request, the respondent held discussions with various parties who were owning the lands identified by the client and sent a report. Already there was a dispute in respect of the ownership of the land with the petitioners. In fact, the petitioners also filed a suit in C.S.No.490 of 2008 before this Court and they also filed an application before the Company Law Board in C.P.No.2 of 2006 in respect of the subject property which was dealt by the respondent herein. Therefore, the petitioners caused legal notice dated 12.02.2009.

10. It is also seen from the notice that the respondent is acting as a Real Estate and Finance agent in respect of the captioned disputed property and its ownership is under dispute in C.P.No.2 of 2006 on the file of the Company Law Board and in C.S.No.490 of 2008 on the file of this Court. Therefore, the fourth petitioner lodged a complaint before the Institute of Chartered Accountants of India for his professional misconduct. Further, the petitioners place on record that majority shareholders of their family barring one or two directors are strongly disapproving of the respondent's unethical strategy and the petitioners reserve the right to keep the concerned Banks/Financial institutions fully



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informed of the real legal disputed status of their property and the respondent's business role in the entire transaction in trying to create more charge/lien/encumbrance on the litigation ravaged family property.

11. Admittedly, the respondent is one of the partners in M/s C.N.G.S.N and Associates. Their client M/s Ozone Projects Pvt. Ltd of Bangalore approached the respondent for acquiring 40 acre of property in Anna Nagar, Chennai. Part of the property owned by the petitioners. Therefore, there is absolutely no defamative statements made by the petitioners in order to defame the respondent in any manner.

12. Admittedly, the company petition and the civil suit are pending in respect of their family property which was dealt by the respondent herein for their client M/s Ozone Projects Pvt. Ltd. Further, it is nothing wrong that the copy of the notice dated 12.02.2009 was sent to all the persons concerned, since the respondent dealt with the property belongs to the petitioners, on behalf of his client M/s Ozone Projects Pvt. Ltd. They had sent the said notice dated 12.02.2009 in order to protect their own family property and caused notice. If at all there is any false statement alleged in the notice dated 12.02.2009, the respondent can very



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well issue reply for the said notice.

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13. Therefore, the lawyer notice sent to the respondent will not attract the provisions of defamation under Section 499 IPC. Further, the fourth petitioner lodged a complaint before the Institute of Chartered Accountants of India against the respondent for his professional misconduct. Therefore, both the complaint before the Institute of Chartered Accountants of India and the legal notice cannot be said that it attracts the offence under Section 499 of IPC. Therefore, the entire allegations in the impugned complaint filed by the respondent is coming well with the ambit of exceptions of provisions under Section 499 of IPC. That apart, it also revealed from the affidavit filed by the petitioners that W.A.Nos.1761 of 2014 and 922 of 2015 are pending before the Hon'ble First Bench of this Court for the professional misconduct and land grabbing of the said professionals involved in the transactions registered to the respondent's client M/s Ozone Projects Pvt. Ltd. Therefore, it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation.



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14. In view of the above, the impugned complaint cannot be sustained as against the petitioners and it is liable to be quashed.

Accordingly, the entire proceedings in C.C.No.4595 of 2009 in the file of XVII Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed.

This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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The XVII Metropolitan Magistrate, Saidapet, Chennai.

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