IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **13.06.2023**
PRONOUNCED ON : **21.06.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 31430 of 2019
and
Crl.M.P. Nos. 17187 & 17188 of 2019

1. HDFC Ltd.,
   Represented by its Chairman,
   Mr. Deepak S. Parekh,
   HDFC House, PB No. 1667,
   Ravipuram Junction,
   Kochi, Ernakulam City,
   Kerala – 682015.

2. Mr. Deepak S. Parekh,
   Chairman,
   HDFC Ltd., HDFC House,
   H.T. Parekh Marg,165-166,
   Backbay Reclamation,
   Churchgate, Mumbai – 400 020.

3. Ms. Renu Sudkarnad,
   Managing Director,
   HDFC Ltd.,
   HDFC House,
   H.T. Parekh Marg,165-166,
   Churchgate, Mumbai – 400 020.

4. Mr. A.S. Sachin,
   Chief Regional Manager,
   HDFC Ltd.,
   HDFC House,
   Ravipuram Junction,

Kochi, Ernakulam City,
Kerala – 682015.

5. Mr.Satheesh K V,
Head CRM,
HDFC Ltd.,
HDFC House, PB No. 1667,
Ravipuram Junction,
Kochi, Ernakulam City,
Kerala – 682015 ...Petitioners

Versus

Daniel Samuel ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C. No. 4081 of 2019 on the file of the IX Metropolitan Magistrate, Saidapet and quash the same as not maintainable.

For Petitioners : Mr. AR.L. Sundaresan, Senior Counsel
for Mr. N. Ravishankar Vallatharasu.

For Respondent : Mr. John Sathyan, Senior Counsel
for Mr. A. Shamsudeen Raja.

O R D E R

The petition is to quash the complaint filed in C.C. No. 4081 of 2019 before the IX Metropolitan Magistrate, Saidapet, for the alleged offence under Section 500 of the Indian Penal Code.

2. It is alleged in the complaint that the complainant and his wife had entered into an agreement with the developer by the name 'Tata Realty and Infrastructure Limited for the purchase of a residential apartment at Kochi for a total sale consideration of Rs.3,00,11,895/-; that the complainant paid a sum of Rs.63,50,384/- and had approached the first petitioner for a housing loan for a sum of Rs.2,46,00,000/-; that a triparte agreement dated 15.07.2015 was entered into between complainant, his wife, the first petitioner and the developer; that the first petitioner in collusion with the developer disbursed the loan amount of Rs.2,42,98,578/- even before the completion of construction, contrary to the terms of the triparte agreement; that the first petitioner started demanding the E.M.I.'s (Equated Monthly Installments) after such disbursal of the loan amount; that the respondent and his wife aggrieved by the said act of the first petitioner and the developer, lodged an F.I.R. in Crime No. 3118 of 2019 on the file of the Ernakulam Central Police; that the respondent had also filed a consumer complaint on the file of State Consumer Disputes Redressal Commission at Thiruvananthapuram; that

the developer offered to settle the dispute; that on 08.03.2019, a settlement agreement was executed as per which the developer refunded the entire amount of Rs.2,42,98,578/- to the first petitioner and paid a sum of Rs.75,00,000/- to the respondent as full and final settlement; that pursuant to the said compromise, the respondent withdrew the criminal complaint and the consumer complaint; that however, the first petitioner had made false entries in the Credit Information Bureau (India) Limited [hereinafter referred to as 'CIBIL' for the sake of convenience] stating that the respondent had borrowed loan from the first petitioner, there was a default and a Suit was filed for recovery of money; that inspite of the letter addressed by the respondent to the first petitioner and its officers to update the CIBIL status stating that their reputation was damaged on account of those false entries; that the first petitioner and its officers did not update the CIBIL entries; that in view of the false entries loan applied by the respondent in his friend's finance company was rejected; that the entries were false and motivated with an intention to harm the reputation of the respondent; and that the friends and others from his business circle started enquiring the respondent about the false entries and hence the petitioners have committed the offence under Section 500 of the Indian Penal Code.

3. (a) Mr. AR.L. Sundaresan, learned Senior Counsel for the petitioners, submitted that the impugned complaint does not disclose the alleged offences. The petitioners have no control over the entries made by the CIBIL authorities. The petitioners have informed the CIBIL authorities that a Suit was filed for the recovery of money. The fact that the Suit was pending and withdrawn on settlement of the dues cannot be disputed by the respondent. The entries would only show that the Suit was filed and there was no money due from the respondent, which is a fact.

(b) Further, the learned Senior Counsel submitted that the fact that there was a default in payment is also admitted. It is the case of the respondent that such an entry should not have been made, as the default cannot be attributed to them. The petitioners cannot be prosecuted for the offence under Section 500 of the Indian Penal Code as the Credit Information Companies (Regulation) Act, 2005 [hereinafter referred to as 'the CIC Act' for the sake of convenience], states that if there is any dispute between the credit information companies, credit institutions, borrowers and clients on matters relating to the business of credit information, the dispute shall be determined as per the provisions of the Arbitration and Conciliation Act, 1996. Since a mechanism is provided under the CIC Act, even assuming that the allegation is true, the offence alleged is not made out.

(c) The learned Senior Counsel submitted that since the fact that there was a default and the Suit was filed cannot be disputed, the said entries cannot be said to be made with the intention to harm the reputation of the respondent.

(d) The learned Senior Counsel submitted that in any event even if it is assumed that the first petitioner had committed the offence, the other officers cannot be held vicariously liable for the offence of defamation in the absence of any specific allegation as to the role played by those officers in the alleged offence of defamation.

(e) The learned Senior Counsel further submitted that the occurrence had taken place within the jurisdiction of Kerala, and the learned Magistrate, Saidapet, has no jurisdiction to try the offence alleged in the impugned complaint.

4. (a) Mr. John Sathyan, learned Senior Counsel for the respondent, per contra, submitted that the complaint is bonafide and discloses the commission of the offence under Section 500 of the Indian Penal Code. The question as to whether the respondent's reputation was harmed due to the act of the petitioners is a matter for adjudication before the trial Court.

(b) The learned Senior Counsel further submitted that the respondent is a resident of Chennai; that his friends and well wishers in Chennai had enquired him about the false entries made; and that his reputation has thus been harmed in the estimation of his friends and other persons in the business circle; and hence the learned Magistrate in Chennai has jurisdiction to try the offence.

(c) The learned Senior Counsel further submitted that the officers of the company were aware of the wrong entries made in CIBIL, and when the respondent's wife had sent a mail asking them to correct the entries, the officers informed that the respondent was a chronic defaulter and there is nothing wrong in the entries made in CIBIL. Thus, the officers, have deliberately made entries with an intention to harm the reputation of the respondent.

(d) The learned Senior Counsel further pointed out to an RBI circular dated 03.09.2013 which had advised the banks not to make lumpsum disbursal and to disburse the amounts based on the stage of construction. In the instant case, since that guideline has been violated by the first petitioner, the respondent cannot be said to be a chronic defaulter and hence, the entries made to that effect in CIBIL is false. The petitioners are aware of the said false entries and deliberately made them only to harm the reputation of the respondent. Hence, the learned Senior Counsel submitted that all these issues could be adjudicated only before the trial Court and prayed for the dismissal of this petition.

5. This Court finds on a reading of the complaint that the crux of the allegation is that the petitioners, in order to tarnish the image of the respondent had published false entries in CIBIL as if the respondent borrowed the loan, defaulted in the repayment of the loan and a suit was initiated for recovery of money. The question involved in this petition is

whether false entries were made by the petitioners in CIBIL and if so whether that would amount to defaming the respondent. In order to answer these questions, one needs to appreciate the provisions of the CIC Act, which was enacted to regulate the functioning of Credit Information Companies and to facilitate the efficient distribution of Credit and for matters connected therewith or incidental there to. CIBIL is a Credit Information Company which is registered under the Companies Act and granted a certificate of registration under Section 5 of the CIC Act by the Reserve Bank of India. The institution that offers loans is called a Credit institution. A Credit institution is defined in Section 2 (f) of the CIC Act and it includes a non-banking financial company, and public financial institutions etc; It is bound to be a member of any Credit Information Company. The first petitioner, which is a Credit institution, is a member of CIBIL. The functions of a Credit Information Company is provided under Section 14 of the said Act. The primary functions are to collect, process and collate information on trade, credit and financial standing of the borrowers of the credit institution and also to provide credit information to its specified users. The Specified user is defined under Section 2 (l) of the CIC Act. The credit institution who is a member of the credit information company, is bound to provide information as per

Section 17 of the CIC Act to the Credit institution company as required by them.

6. In the instant case, the petitioners had provided the information as required of them to the credit information company. It is the case of the respondent that the petitioners ought not to have informed the credit information company about the default and subsequent filing of the Suit. According to the respondent such information had tarnished their reputation since they cannot be held liable for the defaults in view of the wrongful Act committed by the petitioners in disbursing the loan even before the construction of the building commenced. This Court is of the view that the fact that a loan was sanctioned, there was a default and the Suit was filed cannot be disputed by the respondent. The respondent may have a justification for the non-payment and default.

7. The provisions of the CIC Act would make it clear that the credit institution is bound to disclose all the particulars to the credit information company. A reading of the CIBIL report would show that the credit information includes information relating to whether a Suit was filed against the borrower. The respondent cannot deny the fact that a Suit

was filed. A Suit cannot be filed unless there is a default. The petitioners have also disclosed the fact that there are no dues in the account. The entries, thus, cannot be said to be false. In any case, if the respondent is aggrieved by any entry, the CIC Act provides for a detailed mechanism. The mechanism is provided in Section 21 of the CIC Act as also under the Credit Information Companies Rules, 2006. Section 21 of the said Act is extracted hereunder for better understanding;

> ***"Section 21. Alteration of credit information files and credit reports.***
> *(1) Any person, who applies for grant or sanction of credit facility, from any credit institution, may request to such institution to furnish him a copy of the credit information obtained by such institution from the credit information company.*
>
> *(2) Every credit institution shall, on receipt of request under sub-section (1), furnish to the person referred to in that sub-section a copy of the credit information subject to payment of such charges, as may be specified by regulations, by the Reserve Bank in this regard.*
>
> *(3) If a credit information company or specified*

user or credit institution in possession or control of the credit information, has not updated the information maintained by it, a borrower or client may request all or any of them to update the information; whether by making an appropriate correction, or addition or otherwise, and on such request the credit information company or the specified user or the credit institution, as the case may be, shall take appropriate steps to update the credit information within thirty days after being requested to do so:

Provided that the credit information company and the specified user shall make the correction, deletion or addition in the credit information only after such correction, deletion or addition has been certified as correct by the concerned credit institution:

Provided further that no such correction, deletion or addition shall be made in the credit information if any dispute relating to such correction, deletion or addition is pending before any arbitrator or tribunal or court and in cases where such dispute is pending, the entries in the books of the *concerned credit institution shall be taken into account for the purpose of credit information.“*

Thus, it can be seen that the respondent is not without any remedy if there is any information that requires to be updated. A borrower can request the credit institution, the petitioners herein or the credit information company, namely CIBIL, to update the information either by making an appropriate correction or deletion, as the case may be. It is the respondent's case that they had made such a request to the petitioners. It is also an admitted fact that the petitioners had sent a reply stating that since the information given by them to CIBIL is based on records, the same cannot be corrected. Thus, it can be seen that the only grievance of the respondent is that the petitioners ought to have made corrections/alterations in the information given to the CIBIL. If the respondent was aggrieved by such non-correction, the CIC Act provides for a procedure to settle the dispute under Section 18 of the CIC Act. The said provision provides for settling the dispute by Arbitration or Conciliation as provided under the Arbitration and Conciliation Act. The respondent has not resorted to such a process.

8. Thus, whether the respondent had justification for the default or

whether the petitioners had violated the guidelines of the Reserve Bank of India by disbursing the loan are matters which could have been adjudicated by resorting to the Arbitration process. If the petitioner had raised a dispute in terms of Section 18 of the CIC Act, the authorities concerned would have had a chance to address the issue. Thus, in such circumstances, the entries made in the CIBIL cannot be said to be false. The entries are as per the statutory requirements under the CIC Act. Merely because there is an entry that there was the default in the repayment or a Suit has been filed against the respondent, it cannot be said that the same was intended to harm the reputation of the respondent.

9. Be that as it may. In order to attract the offence under Section 500 of the Indian Penal Code as defined under Section 499 of the Indian Penal Code, the words spoken or signs or visible representations containing the imputation must be made or published with an intention to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. Explanation 4 provides that No imputation is said to harm a person's reputation unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person etc. Section 499 of the Indian Penal

Code is extracted hereunder for better understanding;

"Section 499 in The Indian Penal Code:

499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person. Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation. Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the *credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.“*

It is the case of the respondent that giving the information to the Credit Information Agency is publishing a defamatory statement. In order to attract Section 499 IPC, statement containing an imputation must be made or published with the requisite mensrea. However, it would not include statements made under a statutory requirement to an Agency which is required to keep it confidential. Sections 17 and 20 of the CIC Act would show that the credit information has to be kept confidential. To a specific question as to whether the respondent is aware of the exact information furnished to the CIBIL by the petitioners, the learned Senior Counsel for the Respondent submitted that they are not aware of the exact information given by the petitioners but however, they came to know of the adverse entries only due to the rejection of their loan application made to other credit institutions. The above also would show that the respondent themselves are not sure of the exact words of imputation said to have been published/given by the petitioner.

10. Above all, the fact that the information is to be kept

confidential, it is not accessible to the general public, and it is accessible only by the members of the credit information agency would also establish that the statement made by the respondent that he received calls from his business and friends circle about the false entries is only to make it appear that there was a harm to his reputation in the estimation of others. In paragraph No.16 of the complaint, the respondent has stated as follows;

> *"16.The complainant started receiving many telephone calls from his business and friends circle who enquired about the false entries published in CIBIL and the alleged default in repayment of loan dues."*

In view of the confidential nature of the information, this statement cannot be true. It is pertinent to point out that information that is available with the Credit information company, credit institution or any satisfied user shall not be disclosed to third parties and has to be kept confidential as per the provisions of the CIC Act such as Sections 17(4) and 22. Section 17(4) of the CIC Act reads as follows;

> *"(4)No credit information received under this Act, -*
>
> *(a)by the credit information company, shall be disclosed to any person other than its specified user;*

or

(b)by the specified user, shall be disclosed to any other person;

(c)by the credit information company or specified user, shall be disclosed for any other purpose than as permitted or required by any other law for the time being in force."

Section 22 provides for punishment of persons who obtain unauthorised access to credit information. Thus, considering the nature of information required to be furnished under the CIC Act and that it has to be kept confidential, this Court is of the view that information provided by the petitioners in compliance of the statutory requirement cannot be said to be made or published to harm the respondent's reputation.

11. This Court finds that the CIC Act is a Special Act which provides for a composite mechanism to deal with all situations, including the one complained of by the respondent. In fact, Section 23 of the CIC Act provides for offences and penalties if any false entry is made by any person in any written or other document or in any information furnished by him, then, he shall be liable for prosecution. The respondent ought to have resorted to the remedy provided under the CIC Act if they were sure

of their allegation that the entries made by the petitioners were false. The CIC Act further states that such a complaint has to be filed only by the credit information agency, in which case the credit information agency would have to be first satisfied with the allegations in the complaint and thereafter initiate prosecution against the offender. By-passing the above-said procedure, which provides a remedy to the victim and protection to all parties concerned, and resorting to a penal provision by making statements such as friends and others in the business circle came to know about entries etc., which are not factual, is inappropriate, to say the least. In such circumstances, the impugned complaint which does not disclose the offence of defamation is unsustainable for the reasons stated above.

12. Hence, this Criminal Original Petition is allowed by quashing the proceedings in C.C. No. 4081 of 2019 on the file of the IX Metropolitan Magistrate, Saidapet. Consequently, the connected Miscellaneous petitions are closed.

21.06.2023

ay

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The IX Metropolitan Magistrate,
Saidapet,
Chennai.

SUNDER MOHAN, J

ay

Crl.O.P. No. 31430 of 2019
and
Crl.M.P. Nos. 17187 & 17188 of 2019

Dated: 21.06.2023