



Crl.O.P.No.21408 of 2023

In the High Court of Judicature at Madras

Reserved On : 05.2.2024	Delivered on : 08.2.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.21408 of 2023
& Crl.M.P.Nos.14749 & 14751 of 2023

1.R.Prabhu

2.Anita Prabhu

...Petitioners

Vs

CA.V.Venkata Sivakumar

...Respondent

PETITION under Section 482 of the Criminal Procedure Code praying to call for the records pertaining to the case in C.C.No.1906 of 2023 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same as illegal, incompetent and ultra vires.

For Petitioners	:	Mr.M.A.Gouthaman
Respondent	:	Appearing in Person

ORDER

This is a petition filed by the petitioners seeking to quash the proceedings in C.C.No.1906 of 2023 pending on the file of XVII Metropolitan Magistrate, Saidapet, Chennai.



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2. The respondent filed a private complaint against the petitioners alleging that they made serious allegations and defamatory imputations against the respondent while filing affidavits in various interlocutory applications before the National Company Law Tribunal, Chennai Bench II (for short, the NCLT) and the National Company Law Appellate Tribunal, Chennai Bench (for brevity, the NCLAT).

3. According to the respondent, the petitioners made sweeping allegations and innuendos portraying the respondent in a very poor light and damaging his reputation and the sweeping allegations made by the petitioners would amount to an offence of defamation under Section 499 of the Indian Penal Code (hereinafter called the IPC), punishable under Section 500 of the IPC.

4. Heard the learned counsel for the petitioners and the respondent appearing in person.

5. The facts leading to filing of this petition are as follows :

(i) The petitioners are the directors in a company called as



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M/s.Jeypore Sugar Company Limited. At the behest of the IDBI Bank, an application under Section 7 of the Insolvency and Bankruptcy Code (IBC) was admitted by the NCLT by an order dated 25.2.2019, the moratorium of the corporate debtor was declared and the respondent was appointed as the Interim Resolution Professional (IRP). Thereafter, by an order dated 29.5.2020, the NCLT appointed the respondent as the Liquidator of the corporate debtor.

(ii) In that, an application was filed by the petitioners in I.A.No.579 of 2022 before the NCLT under Section 60(5) of the IBC to remove the respondent from his position and to appoint some other competent IRP as the Liquidator. This application was filed by making various allegations against the respondent. It was also contended by the petitioners that the respondent did not possess a valid authorization for assignment as required under Section 7(aa) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Further, an interim order came to be passed by the NCLT on 03.6.2022 restraining the respondent not to deal with any of the assets of the corporate debtor till the disposal of the said application.

(iii) In addition, the IDBI Bank also filed I.A.No.815 of 2020



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before the NCLT seeking removal of the respondent from acting as the Liquidator of the corporate debtor and for other consequential reliefs. In that, the NCLT passed an order on 01.7.2022 holding that the respondent failed to exercise due care and diligence in performance of his functions while discharging his functions as Liquidator in respect of the corporate debtor and hence, the respondent was directed to be replaced.

(iv) Aggrieved by the order passed by the NCLT dated 01.7.2022 in I.A.No.815 of 2020, the respondent filed an appeal before the NCLAT in Company Appeal No.269 of 2022. The NCLAT considered the entire issue in detail and came to the conclusion that the order dated 01.7.2022 passed by the NCLT in I.A.No.815 of 2020 did not require any interference and that the appeal itself was devoid of merits. Accordingly, the NCLAT dismissed the appeal filed by the respondent by order dated 20.12.2022.

(v) As against the order dated 20.12.2022 passed by the NCLAT, the respondent filed a special leave petition before the Apex Court and the same is pending. In the meantime, the respondent filed a private complaint against the petitioners on the ground that they made sweeping allegations against him, that they defamed him and



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that therefore, the respondent wanted the accused persons to be punished for the offence of defamation. This complaint was taken on file by XVII Metropolitan Magistrate, Saidapet, Chennai as C.C.No.1906 of 2023. Seeking to quash the said proceedings, the petitioners are before this Court.

6. It is now a settled law that there is no legal bar for filing a private complaint by alleging that a party to a civil proceeding made certain imputations in the pleadings before the civil court, which are, per se, defamatory. The law on this issue was discussed by a learned Single Judge of this Court in the decision in the case of ***Alli Rani Joseph Mathew Vs. P.Arunkumar [reported in 2013 (1) CTC 661]*** wherein the relevant portions read thus :

"12. At the outset, I want to state that as has been held by this Court consistently, there is no legal bar for filing a private complaint alleging that a party to a civil proceeding has made certain imputations in the pleadings before the civil court, which are per se defamatory. I am also clear that the pendency of the said civil suit is not an impediment for the aggrieved to file a private complaint. Without waiting for the final outcome of the suit, he can very well approach the criminal court by way of a private complaint seeking to punish the accused for defamatory statements made in



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the pleadings, provided the averments in the pleadings are totally unconnected to or unwarranted for the issues involved in the civil suit and they are per se defamatory. In any civil proceeding, it is absolutely necessary for the party concerned to make averments relevant to the issues. If such relevant averments are not made, the civil court may not permit the party to make a plea on that subject orally and also to lead evidence. It is common knowledge that in civil suits, there cannot be any evidence let in without there being relevant pleading. In this case, the petitioners have made averments touching upon the personal conduct and the relationship between the deceased and the respondent. According to the learned Senior Counsel for the petitioners, these averments are very much relevant for the civil court to decide as to whether the unregistered Will of the year 2005, which the respondent is projecting, would have been really executed by the deceased or not. The circumstances like the relationship between the deceased and the party in whose favour now the Will is projected and the love and affection between the parties are all relevant to this core issue as to whether the Will would have been executed by the deceased. Suppose, it is proved that the deceased was not in good terms with the respondent and they were fighting with each other frequently, it may be a circumstance to prove that the Will would not have been executed by the deceased in favour of the individual concerned. In the case on hand, the averments, which are stated to be defamatory, relate to the personal character of the respondent as



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well as his relationship with the deceased. These are all, in fact, relevant for the civil court to decide the issue as to whether the Will of the year, 2005 was really executed by the deceased or not. If these averments have not been made in the pleadings before the civil court, as I have already stated, the petitioners may not be permitted by the civil court to plead on that subject orally and lead evidence and as a result, they may not be in a position to disprove the Will. Therefore, it cannot be stated that these averments are totally unnecessary.

13. In this regard, it is useful to refer to [Order VI Rule 16 of the Code of Civil Procedure](#) which reads as follows:

'O.6 R.16. Striking out pleadings The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or) which is otherwise an abuse of process of the court.'

14. As per the said rule, if it is the case of the respondent that these averments are either unnecessary or scandalous, frivolous or vexatious or which may tend to prejudice the mind of the court, he could have very well made an application under this provision before the civil court seeking to strike out the above averments in the plaint. If any such petition is filed, certainly, the civil court would give a finding as to whether these averments have got any relevance to the



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issues involved in the suit and whether these averments are scandalous, frivolous and vexatious or they are in the nature of causing prejudice in the mind of the court. If only such a finding is given by the civil court, then, the respondent would be entitled to approach the criminal court that the statements are defamatory because they are scandalous. In my considered opinion, when the averments are very relevant to the issues involved in the suit and the suit is pending, the respondent is precluded to file a private complaint.

15. This may also be viewed from a different angle. Let us assume that the present prosecution is allowed to continue further and if the criminal court holds that these statements are scandalous and accordingly punishes the accused and later on, the civil court gives a finding that they are not scandalous, frivolous, vexatious and holds that they are necessary to the issues involved in the suit, then, the said finding of the civil court will be contrary to the findings of the criminal court. Such a situation leading two courts of law to render two conflicting judgments cannot be permitted. Therefore, in my considered opinion, it is for the petitioners either to approach the respective civil court under Order VI Rule 16 or to wait till the final outcome of the civil suit and then to work out his remedies in the manner known to law."

7. This Court has to see as to whether the averments made in the affidavits are scandalous and defamatory and as to whether those



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averments were relevant to the issue involved in the proceedings that were dealt with by the NCLT and the NCLAT.

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8. On carefully going through the orders passed by both the NCLT and the NCLAT, it can be seen that the allegations made against the respondent had, in fact, been taken into consideration while deciding the issue. The NCLT nowhere stated that the allegations made against the respondent were scandalous or frivolous or defamatory. The fact that the NCLT took a decision to remove the respondent from his position based on the applications filed by the petitioners and the IDBI Bank would show that the NCLT was prima facie satisfied with those allegations. Therefore, the allegations that were made against the respondent in the application filed by the petitioners became necessary in order to project the conduct/character of the respondent. If those allegations were not made in the application filed by the petitioners, there was no ground for the petitioners to seek the removal of the respondent from acting as the Liquidator. The findings rendered by the NCLT and the NCLAT would show that the respondent was, in fact, involved in certain acts, which fell within the scope of Section 276 of the Companies Act, 2013.

9. In the light of the above discussions, it is clear that the



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allegations made against the respondent cannot be said to be unconnected or unwarranted for deciding the issue that was involved in the application filed by the petitioners. Hence, this Court holds that those allegations made against the respondent will not give an independent cause of action to file a defamation complaint against the petitioners. In fact, the facts of this case will directly come under Exception (8) to Section 499 of the IPC. In the considered view of this Court, the continuation of the criminal complaint against the petitioners will result in abuse of process of court and the same requires the interference of this Court under Section 482 of the Criminal Procedure Code.

10. In the result, the above criminal original petition is allowed and the proceedings in C.C.No.1906 of 2023 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai is hereby quashed. Consequently, the connected Crl.M.Ps. are closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

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N.ANAND VENKATESH,J

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To

1.The National Company Law Tribunal,
Chennai Bench II.

2.The National Company Law Appellate
Tribunal, Chennai Bench

3.The 17th Metropolitan Magistrate,
Saidapet, Chennai.

4.The Public Prosecutor,
High Court, Madras.

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