

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 2307 of 2019

ORDER:

The present Criminal Petition is filed by the petitioners/ A1 and A2 under Section 482 of Cr.P.C., seeking to quash the proceedings initiated against them in C.C.No.834 of 2015 on the file of the XVII Additional Chief Metropolitan Magistrate, at Nampally, Hyderabad.

The facts in issue are as under:

The 2nd respondent/complainant (hereinafter referred to as the “2nd respondent Company”) filed a private complaint against the petitioners/ A1 and A2 before the XVII Additional Chief Metropolitan Magistrate, at Nampally, Hyderabad, for the offences punishable under Section 499 read with Section 500 of I.P.C., alleging therein that the 2nd respondent Company is doing business throughout India. During the course of its business, the 2nd respondent Company was awarded with a Contract of “Rajiv Gandhi Grameen Vidyuth Karan Yojna” work in Bijapur District, Karnataka State, from Hubli Electricity Supply Company Limited vide a letter of award No.HESCOM/SEE(T&P)/E-3/DWA/RGGVV4(A)/Bijapur/1562/0506. The 2nd petitioner/A2 representing the 1st petitioner/A1 approached the 2nd respondent Company and requested that he may be awarded a job work of the part of the above work. The 2nd respondent Company awarded part of the above job work at Indi Taluq of Bijapur District. As the petitioners/A1 and A2 failed to

execute the job work, the 2nd respondent Company terminated the agreement. Subsequently, the remaining left over work was entrusted to third party. The 2nd respondent Company has sustained huge loss due to failure on the part of the petitioners/A1 and A2 to execute the work within the time frame. It is further stated that subsequently the petitioners/A1 and A2 approached the 2nd respondent Company and requested to award further contract. In order to help them from financial troubles, the 2nd respondent Company paid a sum of Rs.33,50,171/- through three cheques bearing Nos.(1) 817934 for Rs.10.00 lakhs, (2) 817987 for Rs.10,90,171/- and (3) 891560 for Rs.12,60,000/-. However, no work has been awarded to the petitioners/A1 and A2 and the said mobilization advance amount converted as loan and the petitioners/A1 and A2 promised to repay the same within a short time or adjust in future works. It is further submitted that the 1st petitioner/A1 represented by the 2nd petitioner/A2, who is the Managing Director of the 1st petitioner/A1, with a dishonest and malafide intention, to defame the 2nd respondent Company and its Directors and Managing Directors and to cause deliberate and malicious intention of attacking the 2nd respondent Company and to bring down the reputation in the society, addressed a letter, dated 07.06.2015, to the Assistant General Manager, Indian Overseas Bank, Mid Corporate Branch at 8-2-120/117/S-1, 1st floor, Punnaiah Plaza, Road No.2, Banjara Hills, Hyderabad, with all baseless allegations

against the 2nd respondent Company and also making the following imputation:

“1. The 2nd respondent Company is involved in several criminal cases (16), registered at Indi and Sindagi Taluqs of Bijapur District, Karnataka State.

2. That Crime Nos.35 and 36 of 2010 at Jalaki Police Station have been registered against the 2nd respondent Company.

3. O.P.No.2492 of 2011 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, filed by M/s. YESES Infrastructures Private Limited, is pending against the 2nd respondent Company.

4. A Crime is registered by Gandhi Nagar P.S. at Jammu, against the 2nd respondent Company.

5. That the 2nd respondent Company is involved in several unlawful issues pertaining to financial offences.

6. That the 2nd respondent Company and its promoters are going for unlawful and fraudulent amalgamation of companies to raise their net worth unethically.”

It is stated that all the allegations and imputations made in the said letter are completely, incorrect, baseless, false and without any merit. The petitioners/A1 and A2 with a sole intention of defaming the 2nd respondent Company and its Directors addressed the above said letter. The letter, dated 07.06.2015, is malicious and is motivated with unlawful intent to harm and bring down the reputation of the 2nd respondent Company in the eye of financial institutions and general public. Addressing letter to the financial institution of the 2nd respondent Company is only to scandalize and sensationalize the

issue for the purpose of damaging the reputation of the 2nd respondent Company, which constitute a criminal defamation and the petitioners/A1 and A2 are liable to be punished for the offences punishable under Section 499 read with Section 500 of I.P.C. After recording the sworn statement of the Legal Advisor of the 2nd respondent Company, the learned Magistrate has taken cognizance against the petitioners/A1 and A2, for the offences punishable under Section 499 read with Section 500 of I.P.C. and numbered as C.C.No.834 of 2015. The present Criminal Petition is filed to quash the proceedings against the petitioners/A1 and A2 in C.C.No.834 of 2015.

Heard learned Counsel for the petitioners/A1 and A2, learned Additional Public Prosecutor for the 1st respondent/State and learned Counsel appearing for the 2nd respondent Company.

Learned Counsel for the petitioners/A1 and A2 would submit that even if the entire allegations are taken in its entirety, do not constitute any offence much less the offences alleged against the petitioners/A1 and A2. It is further submitted that the contents of the complaint did not indicate any of the ingredients as envisaged under Section 499 of I.P.C. and there is no averment in the complaint whatsoever and also the nature of imputation made by the petitioners/A1 and A2, which would constitute the offence. It is also submitted that there are no specific allegations attributed to the petitioners/A1 and A2 and there are no basic ingredients to

constitute the offence except that the petitioners/A1 and A2 had sent a letter to the Assistant Manager, Indian Overseas Bank. It is further submitted that referring some letters and criminal cases in the letter alleged to have been sent by the petitioners/A1 and A2 cannot be construed as a complaint as defined under Section 2 (d) of Cr.P.C. and therefore, the letters about the criminal cases are all beyond the scope of the ingredients of the complaint. It is also submitted that whatever stated in the letter are all in good faith and that would fall within the exceptions of 8, 9 and 10 of Section 499 of I.P.C., but the petitioners/A1 and A2 need not take shelter under those exceptions, as the complaint filed by the 2nd respondent Company itself is lack of ingredients to constitute the offences. It is further submitted that the complaint itself do indicate that there are criminal cases filed against the 2nd respondent Company and some of them are closed and in some of the cases, applications are filed seeking discharge. It is also submitted that initiation of proceedings against the petitioners/A1 and A2 are abuse of process of law. In support of his contentions, he relied on the judgments of the Apex Court in *Rajendra Kumar Sitaram Pande and others v. Uttam and another*¹ and this Court in *Bajaj Finance Limited and others v. State of Andhra Pradesh and others*².

Learned Counsel for the 2nd respondent Company would submit that the petitioners/A1 and A2 addressed letter to Indian

¹ (1999) 3 SCC 134

² (2017) 1 ALD (CrI.) 1042

Overseas Bank only to defame the 2nd respondent Company in the eye of financial institutions and general public and *prima facie* the allegations attract the offence punishable under Section 499 of I.P.C. The truth or otherwise of the allegations can only be decided in the course of trial and the complaint cannot be quashed at the threshold. He relied on the following judgments.

1. *P.S.Meherhomji v. K.T.Vijay Kumar and others*³
2. *Balraj Khanna and others v. Moti Ram*⁴
3. *Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi and others*⁵
4. *M.N.Damani v. S.K.Sinha and others*⁶
5. *Sewakram Sobhani v. R.K.Karanjia*⁷
6. *Jeffrey J.Diermeir and another v. State of W.B. and another*⁸
7. *M.Ramugam v. Kittu*⁹ and
8. *Truth and Sportsmen v. George Stanley*¹⁰

Before proceeding further, it would be useful to refer to Section 499 of I.P.C., which reads as under:

"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 excepted, 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

³ (2015) 1 SCC 788

⁴ (1971) 3 SCC 399

⁵ (1996) 6 SCC 263

⁶ (2001) 5 SCC 156

⁷ (1981) 3 SCC 208

⁸ (2010) 6 SCC 243

⁹ (2009) 1 SCC 101

¹⁰ AIR 1933 P.C. 36 at Page 569

that person if living, and is entitled 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 an alternative or express 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.

First exception - Imputation of truth which public good requires to be made or published - It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception - Public conduct of public servants - It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception - Conduct of any person touching any public question - It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception - Publication of reports of proceedings of Courts - It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation - A Justice of the peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of justice, is a Court within the meaning of the above section.

Fifth Exception - Merits of case decided in Court or conduct of witnesses and others concerned - It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception - Merits of public performance - It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation - A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception - Censure passed in good faith by person having lawful authority over another - It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception - Accusation preferred in good faith to authorised person - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Ninth Exception - Imputation made in good faith by person for protection of his or other's interests - It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of that person making it, or of any other person, or for the public good.

Tenth Exception - Caution intended for good of person to whom conveyed or for the public good - It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

From a bare reading of Section 499 of I.P.C., the essential ingredients of defamation are: (1) Making or publishing any imputation concerning any person; (2) Such imputation must have been made by (a) words, either spoken or intended to be read; or (b) signs; or (c) visible representations; (3) such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

It is apparent from a perusal of the authorities cited by both the learned Counsel that the facts of these cases are totally different from the facts of the case on hand. In the instant case, addressing a letter to the financial institution where the 2nd respondent Company is having account is not being denied by the petitioners/ A1 and A2, rather it is being argued that whatever alleged in the letter are all in good faith and that would fall within the exceptions of 8, 9 and 10 of Section 499 of I.P.C., but the petitioners/ A1 and A2 need not take shelter under those exceptions as the complaint itself lack of ingredients to constitute the offence.

Having carefully perused the contents of the complaint, the sworn statement of the Legal Advisor of 2nd respondent Company, the learned Magistrate took cognizance of the complaint and the said act of the learned Magistrate cannot be said to be improper exercise of the jurisdiction by the Magistrate. During the course of trial, it is always open to the petitioners/A1 and A2 to prove their defence, but on the ground that the alleged act of the petitioners/A1 and A2 did not constitute any offence under Section 499 of I.P.C., cannot be a ground to quash the proceedings without there being any supporting evidence on record. Hence, there are no merits in the petition and the Criminal Petition is liable to be dismissed.

In the result, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

29.11.2019

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