

Bala Srinivas Rao Namburi vs M/S Nsl Sugars Limited on 2 June, 2021

Equivalent citations: AIR 2021 TELANGANA 137, AIRONLINE 2021 TEL 47

Author: M.S. Ramachandra Rao

Bench: M.S. Ramachandra Rao

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

Civil Revision Petition No.481 of 2021

Between:

Bala Srinivas Rao Namburi,
S/o.Rama Sastrulu Namburi,
Aged : 44 years; Occ : Consultant,
R/o.H.No.1530, Pegasus - A, Meenakshi
Sky Lounge, Kothaguda, Hitechs Road,
Hyderabad.

...Petitioner / Defendant / Petitioner

And

M/s. NSL Sugars Limited,
having its Corporate Office at
NSL Icon, 4th floor, D.No.8-2-684/2/A,
Road No.12, Banjara Hills, Hyderabad -
500 034, and having its registered office at
#60/1, 2nd Cross, Residency Road,
Bangalore - 560025, rep. by its
Authorised Signatory Mr. Y. Madhu Babu.

...Respondent / Plaintiff / Respondent

Date of Judgment pronounced on : 02.06.2021

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

And

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes
to Law Reporters/Journals:

3. Whether His Lordships wishes to see the fair copy : Yes/No
Of the Judgment?

::2::

MSR,J & TA,J
crp_481_2021

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

Civil Revision Petition No.481 of 2021

% 02.06.2021

Bala Srinivas Rao Namburi,
S/o.Rama Sastrulu Namburi,
Aged : 44 years; Occ : Consultant,
R/o.H.No.1530, Pegasus - A, Meenakshi
Sky Lounge, Kothaguda, Hitechs Road,
Hyderabad.

...Petitioner / Defendant / Petitioner

And

\$ M/s. NSL Sugars Limited,
having its Corporate Office at
NSL Icon, 4th floor, D.No.8-2-684/2/A,
Road No.12, Banjara Hills, Hyderabad -
500 034, and having its registered office at
#60/1, 2nd Cross, Residency Road,
Bangalore - 560025, rep. by its
Authorised Signatory Mr. Y. Madhu Babu.

...Respondent / Plaintiff / Respondent

< GIST:

> HEAD NOTE:

!Counsel for the Petitioner : Sri R. Sushanth Reddy

^Counsel for the respondent : Sri A. Venkatesh

? Cases referred

1. (2006) 3 SCC 634

::3::

MSR,J & TA,J
crp_481_2021

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Civil Revision Petition No.481 of 2021

ORDER:

(Per Hon'ble Sri Justice M.S. Ramachandra Rao) This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.19.01.2021 passed in Interlocutory Application No.522 of 2020 in O.S.No.252 of 2020 on the file of XXVI Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioner in the Revision is defendant in the above suit. The plea of the respondent/plaintiff in the plaint

3. The respondent / plaintiff filed the said suit against petitioner for a perpetual injunction restraining petitioner from making false, frivolous, defamatory and derogatory accusations and allegations against it by way of and in the form of letters, representations, e-mails and any other medium of communication.

4. In the above suit, it is the contention of respondent that it is a Company incorporated under the Companies Act, 1956 having range of business activities, and the petitioner who was its Chief Financial Officer from 01.04.2017 to 12.04.2019, and who had signed a Non- Disclosure Agreement dt.02.06.2017, was under an obligation to maintain secrecy in respect of sensitive information relating to the ::4:: MSR,J & TA,J crp_481_2021 respondent-Company which would come to his knowledge during the course of his employment.

5. It contended that it discovered that petitioner had committed breach of trust and committed large-scale financial irregularities, misappropriated crores of rupees of money belonging to respondent and committed breach of trust, defrauded and cheated the respondent.

6. It contended that thereafter the respondent conducted a detailed enquiry through an internal enquiry committee constituted on 05.04.2019 which gave a report on 16.04.2019 finding the petitioner guilty of commission of financial irregularities and embezzlement of funds to the tune of Rs.5.72 crores in the respondent-Company, and also guilty of transmitting confidential data of the respondent to third parties.

7. It also alleged that when the petitioner was questioned on 05.04.2019 by the said Committee, the petitioner admitted his guilt and when asked to put the same in writing, he sent his resignation through e-mail and left the respondent-Company.

8. It is contended that the audit committee of the Board of the respondent and its sister concern conducted an internal enquiry and also appointed a Chartered Accountant Firm by name Sagar and Associates (Chartered Accountants) and got conducted special audits of the respondent and its sister concern, and the said auditors have also submitted a report on 17.04.2019.

::5::

MSR, J & TA, J
crp_481_2021

9. It alleged that it appointed a Retired District Sessions Judge as an internal enquiry officer to conduct an unbiased domestic enquiry, but the petitioner did not come forward to attend the said enquiry in spite of being given ample opportunity and the enquiry officer submitted enquiry report on 23.10.2019 holding the petitioner guilty of misconduct and financial irregularities.

10. It contended that it lodged a police complaint on 18.04.2019 before the Banjara Hills Police Station, Hyderabad and an FIR No.308/19 dt.19.04.2019 was also registered by the said police against petitioner for offences under Sections 408 and 420 of I.P.C., and the same was pending investigation.

11. It also stated that petitioner was arrested on 23.04.2019 and remanded to judicial custody by the III Additional Chief Metropolitan Magistrate, Hyderabad, and later the petitioner secured bail and got released on 06.05.2019.

12. It also contended that petitioner committed similar offences in the sister concern and another complaint dt.09.05.2019 was also filed before the Banjara Hills Police Station, Hyderabad against the petitioner, and since the police failed to register a case, a private complaint was lodged before the III Additional Chief Metropolitan Magistrate, Hyderabad, and the matter was referred under Section 156(3) Cr.P.C. to the Police Station, Banjara Hills to register an FIR and investigate the matter; and subsequently, a Crime No.602/2019 dt.05.07.2019 for offences under Sections 406, 408 and 420 I.P.C. were registered and a charge-sheet was also filed on 12.10.2019.

::6::

MSR, J & TA, J
crp_481_2021

13. Reference is also made to a complaint dt.18.05.2019 by the respondent to the Dy. Secretary, Disciplinary Directorate, Institute of Chartered Accountants of India against petitioner for fraud committed by him, and also to a complaint dt.19.07.2019 before the Special Judge for Economic Offences, Nampally, Hyderabad for the offences under the penal provisions of the Companies Act and C.C.No.150 of 2019 being registered against petitioner.

14. Another C.C.No.11 of 2019 was registered against petitioner on the basis of complaint dt.26.07.2019 filed by the sister concern of the petitioner by the Special Judge for Economic Offences, Nampally, Hyderabad.

15. Reference is also made to FIR No.581 of 2019 filed before the Cyber Crime Police Station, C.C.S., Hyderabad against petitioner for offences punishable under Section 66 R/w Section 43 of the Information Technology Act, 2008.

16. It further contended that after having been found guilty of committing various offences, the petitioner started employing black- mailing tactics against the respondent with an intention to pressurize the respondent to withdraw the cases, and the petitioner started defaming the respondent, its promoters, Managing Directors and Board Directors with a dishonest and mala fide intention to bring down their reputation in the eyes of several Banks and Financial Institutions and other public bodies, and it has also filed CCSR.No.8185/2019 before the XII Additional Chief Metropolitan ::7:: MSR,J & TA,J crp_481_2021 Magistrate, Kukatpally, Hyderabad alleging that petitioner committed offences under Sections 499 and 500 of I.P.C.

17. It further alleged that petitioner, with an intention of maligning the reputation of the respondent-Company and its sister concern sent a letter dt.27.06.2019 to the Central Vigilance Cell, Reserve Bank of India alleging bank fraud, financial irregularities, various false accusations, derogatory and defamatory allegations which were also false, and petitioner also sent a letter dt.27.06.2019 to various Government Bodies, Statutory Authorities and Public Offices with the sole aim and intention of harassing and arm-twisting the respondent so that the respondent would withdraw the cases and stop pursuing legal remedies.

18. It also made a detailed reference to the contents of letter dt.27.06.2019 written by petitioner against itself and its officials, which was sent to the Dy. Director, Serious Fraud Investigation Office (SFIO), to the Secretary, Ministry of Corporate Affairs, Government of India, New Delhi, to the Regional Director and the Registrar of Companies, Hyderabad, to the Deputy Commissioner of Income Tax, Mangalore, and to the Superintendent of Central Bureau of Investigation, Hyderabad, etc.

19. It also alleged that petitioner gave another letter dt.27.06.2019 to Commissioner of Hyderabad, GST Commissionerate, Hyderabad, to Assistant Commissioner of Commercial Taxes (Koppa & Aland Units), to Assistant Commissioner of GST and Central Excise, Bhokardan, Jalna, and to the Regional Director, Corporate Bhavan, ::8:: MSR,J & TA,J crp_481_2021 R.R. District, Hyderabad making false and defamatory allegations which were also scandalous and malicious.

20. It also referred to another letter dt.16.08.2019 written by petitioner to the Central Vigilance Commission at New Delhi making similar allegations and letter dt.15.08.2019 to the Secretary, NCALT alleging fraud and financial irregularities committed by the respondent.

21. It also referred to the letter dt.01.08.2019 written by petitioner to the Director / Head, Banking Securities and Fraud, CBI, repeating false allegations of alleged banking fraud and financial irregularities said to have been committed by respondent, and other correspondence addressed to C.B.I. and G.S.T. Authorities, C.B.C., etc.

22. It also contended that it had adopted a 'Whistle-Blower' Policy in the 127th Board meeting held on 28.08.2014 and under the said policy, the petitioner in his capacity as C.F.O. should have notified the audit committee or the Board or the notified vigilance officer of the respondent, but he did not do so, and it is therefore clear that petitioner was not writing these letters with clean hands and it shows that he is a bona fide Whistle-Blower.

23. It also alleged that the tactics adopted by petitioner to brow-beat it and harass it was only to cover up his financial crimes committed while in the service of respondent, and there was clearly ill-will and antipathy against respondent since it had initiated criminal proceedings against the petitioner; and the allegations contained in the ::9:: MSR,J & TA,J crp_481_2021 letters addressed by petitioner were false and defamatory with the sole aim and intention of wrecking vengeance and harming the respondents and to tarnish the reputation and goodwill of respondent, which was built up over the past 20 years.

24. It therefore filed the suit in November, 2020 against petitioner for a perpetual injunction restraining petitioner from making false, frivolous, defamatory and derogatory accusations and allegations against it by way of and in the letters, representations, e-mails and any other medium of communication stating that unless such injunction is granted, there is no way to stop the petitioner from tarnishing its reputation.

IA No.522 of 2020 filed by petitioner under or.Vii Rule 11 CPC to reject plaint

25. Thereafter, petitioner filed Interlocutory Application No.522 of 2020 in O.S.No.252 of 2020 under Order VII Rule 11 of C.P.C. to reject the plaint.

26. While defending his conduct during the employment as C.F.O. with the respondent and his resignation on 12.04.2019, it is alleged that the intention of respondent was to harass him by filing several criminal cases and complaints against him. The petitioner insisted that the financial records of the respondent-Company would disclose the nature, scale and complexity of the fraud committed by the respondent which requires investigation by specialized agency and so he was justified in addressing letters to various agencies to unearth the fraud committed by respondent.

::10::

MSR,J & TA,J
crp_481_2021

27. He then contended that the suit is barred by law under Section 41 of the Specific Relief Act, 1963 which directs that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a criminal matters; that the plaint seeks such injunction to restrain the petitioner from making defamatory accusations against the respondent, Statutory Bodies, Government Bodies, Public Officers; and so the plaint should be rejected by applying Order VII Rule 11 (d) of C.P.C. read with Section 41 (d) of the Specific Relief Act, 1963.

28. He also claimed that he is entitled to protection under the Witness Protection Scheme, 2018. According to him, complaints made to lawful authorities regarding offences committed by any person cannot amount to defamation and they are protected by law.

29. He also contended that there is no cause of action to file the suit, and on that ground also the plaint is also required to be rejected. He alleged that unless all the investigations regarding the complaints made by the petitioner against the respondent are dismissed by the competent Courts, there is no cause of action to approach the Court for grant of injunction.

The order dt.19.1.2021 in IA No.522 of 2020

30. By order dt.19.01.2021, the Court below dismissed the said I.A.

31. It held that the plaint disclosed a cause of action to file the suit. There is no legal bar for filing the suit and the suit is within limitation.

:: 11 ::

MSR, J & TA, J
crp_481_2021

32. It noted that the respondent in para no.4 of the plaint had pleaded the definite cause of action for filing the suit, and the petitioner's contention that the respondent would not get a cause of action until the petitioners' letters are decided to be false, frivolous would not apply to a suit for perpetual injunction. The present CRP

33. Challenging the same, the present Civil Revision Petition is filed.

34. Heard Sri R.Sushanth Reddy, counsel for petitioner, and Sri A. Venkatesh, counsel for respondent.

35. The counsel for petitioner contended that the Court below erred in rejecting Interlocutory Application No.522 of 2020 in O.S.No.252 of 2020 even though there is no cause of action to file the suit and the suit is barred by limitation and there is a bar contained under Section 41(b) of the Specific Relief Act, 1963 to entertain the suit.

36. On the other hand, the counsel for respondent refuted the above contentions and supported the order passed by the Court below.

37. As rightly held by the Court below, the bar under Section 41(b) and (d) of the Specific Relief Act, 1963 for grant of injunction is only to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought [Clause (b) of Section 41] or to restrain any person from instituting or prosecuting any proceeding in a criminal matter [Clause (d) of Section 41].

38. The respondent in the suit has not sought any restraint on petitioner from instituting or prosecuting any proceeding in a Court not subordinate to the XXVI Additional Chief Judge, City Civil Court, Hyderabad where the suit was filed nor did he seek to restrain petitioner from instituting or prosecuting any proceeding in a criminal matter. Therefore, prima facie, the bar under Section 41(b) or (d) of the Specific Relief Act, 1963 is not attracted.

39. Coming to the issue of cause of action which the petitioner claims not to be in existence, in para no.IV of the plaint, the respondent had explained in detail how there is cause of action for the respondent to file the suit. Reference was made to petitioner's conduct in addressing letters dt.27.06.2019 and 17.08.2019 to various Public Institutions and Authorities. Therefore, it cannot be said that there was cause of action to file the suit.

40. We do not agree with the contention of the petitioner that till the correctness of the allegations leveled against the petitioner are examined, the petitioner should be permitted to continue to make such allegations damaging the reputation and goodwill of the respondent in business circles.

41. Secondly, the plea of bar of limitation also cannot be countenanced because for a suit for injunction the residuary Article 113 of the Limitation Act, 1963 would apply and the cause of action for the said relief arises when the right to sue accrues and the ::13:: MSR,J & TA,J crp_481_2021 limitation period prescribed is 3 years from the date when such right accrues (See Gunwantbhai Mulchand Shah vs. Anton Elis Fare1).

42. Therefore, taking into account the fact that letters were addressed by petitioner to various authorities from June, 2019 onwards, the suit filed in November, 2020 cannot be said to be beyond time.

43. In this view of the matter, we do not find any error of jurisdiction in the order passed by the Court below refusing to reject the plaint under Order VII Rule 11 C.P.C.

44. Accordingly, the Civil Revision Petition fails and it is dismissed. No costs.

45. As a sequel, miscellaneous petitions pending if any in this Revision, shall stand closed.

----- M . S . R A M A C H A N D R A R A O , J
T. AMARNATH GOUD, J Date: 02.06.2020 LR Copy to be marked :
Yes B/o.

Ndr (2006) 3 SCC 634