Manikandan B. & Anr. vs Pavan Gaur on 13 April, 2022

Author: Asha Menon

Bench: Asha Menon

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Pronounced on: 13th April, 20

+ CRL.M.C. 2220/2020, CRL.M.A.15801/2020 (for stay)

MANIKANDAN B. & ANR .....Petit

Through: Mr. Nalin Kohli, Mr. Ankit Ro and Ms. Nimisha Menon, Advocates

Versus

PAVAN GAUR .....Respo

Through: Ms. Neelima Tripathi, Advocate with Mr. Mandeep Sin Vinaik, Ms. Ragini Vinaik and Vandini Dagar, Advocates

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of the summoning order dated 29th January, 2020 passed by the learned Metropolitan Magistrate-06, South East, Saket District Court in complaint case No.4774/2019.

2. The petitioners have been summoned to face trial for having committed the alleged offences under Sections 499/500 of the Indian Penal Code, 1860. The respondent filed a complaint before the learned Trial Court alleging that by means of a letter dated 10th December, 2018 the petitioner No.2 through the petitioner No.1 i.e., the Managing Director, had defamed the respondent in the eyes of the third persons being vendors. However, learned counsel for the petitioners, Shri Nalin Kohli, urged that unless and until there was an intention to cause harm and the contents of the letter had been made without a valid cause, no offence, even prima facie, would be made out against the petitioners. It is submitted that as regards the respondent No.2 being a company, it could have no mens rea as required under Section 499 and that straightway the summoning of the petitioner No.2 had to be quashed.

3. The petitioner No.1 has submitted that the letter in question was necessitated on account of the unlawful activities of the respondent himself. It was submitted that the respondent being an employee of the petitioner No.2, had not made fair disclosures to the petitioner No.2 before employment and had also thereafter engaged in activities detrimental to the interests of the company (petitioner No.2). The employment agreement between the petitioner No.2 and the respondent had come to an end on 31st March, 2017 after which various extortionate demands had

been made by the respondent upon the petitioner No.2, which the petitioner No.2 rejected. Thereafter, on 7th June, 2018, the respondent resigned from the petitioner No.2/Company raising baseless allegations against the petitioner No.2/Company. The resignation was duly accepted.

4. On account of certain actions of the respondent along with his mother Smt. Jagrani Gaur, the petitioner No.2 lodged a criminal complaint on 7th September, 2018 at P.S. Safdarjung Enclave under various sections of the IPC. Another criminal complaint was registered on 19th September, 2018 at PS Expressway Phase-II, Sector 83, Noida, against the respondent and some others, including the landlord of the premises at Noida, from where the petitioner No.2 was functioning. The allegations were that the respondent, his mother and the landlord had illegally ousted the petitioner No.2 and taken over the business of the petitioner No.2 run from those premises.

5. Another FIR No.0819/Case Crime No.819 of 2018 was registered by the Police Station Phase-2, District GB Nagar, Noida on 14th November, 2018 under Sections 406 and 420 IPC against the respondent. Yet another criminal complaint was lodged on behalf of the petitioner No.2 on 29th December, 2018 at the same Police Station against the respondent and some others. It is submitted that the registration of the FIR No.819/2018 was sought to be quashed by the respondent by filing a Criminal Misc. Writ Petition bearing No.35802 of 2018 before the Allahabad High Court, which vide order dated 11th December, 2018 refused to quash the same.

6. Learned counsel for the petitioners submitted that in the impugned order, the learned MM, by summoning the petitioners, reproduced the letter dated 10th December, 2018 highlighting words such as „orchestrated an illegal lock out and „took over the building and our assets and „FIR has already been registered . Therefore, it is urged that these were the contents that prevailed upon the learned MM to consider the letter as being per se defamatory. However, it was submitted that though two witnesses were examined by the respondent, not a word was mentioned of the actual registration of the FIR which the Allahabad High Court had refused to quash.

7. It was further submitted that the petitioners had to protect their business interests in view of the unlawful actions taken by the respondent and in light of the several criminal and civil litigations pending between the parties, in order to warn the vendors and business associates to be wary of dealing with the respondent whom they have earlier understood to be the employee of the petitioner No.2. Therefore, there was no intent to cause any harm, which was an essential and necessary ingredient of defamation.

8. Reliance has been placed on several judgments: Raymond Ltd. vs. Rameshwar Das Dwarkadas P Ltd. 2013 SCC OnLine Del 1328, Nissan Motors vs. S Giri Prasad 2019 SCC OnLine Mad5945, Kalpnath Rai vs. State (1997) 8 SCC 732, Rajiv Thapar vs. Madan Lal Kapoor (2013) 3 SCC 330, Rashmi Chopra vs. State of U.P. (2019) 15 SCC 357, Dhanlakshmi vs. R Prasanna Kumar 1990 Supp SCC 686, MMST Chidambaram Chettiar vs. Shanmugam Pillai AIR 1938 Mad 129,Vineet Kumar vs. State of U.P. (2017) 13 SCC 369 and Pepsi Foods Ltd. vs. Special Judicial Magistrate (1998) 5 SCC 749. In support of the contention that the petitioner No.2 being a juristic person could possess no mens rea, reliance has been placed on Raymond Ltd. vs. Rameshwar Das Dwarkadas P Ltd. 2013 SCC Online Del 1328, Nissan Motors vs. S Giri Prasad 2019 SCC Online Mad5945 and Kalpnath Rai

vs. State (1997) 8 SCC 732.

9. In support of the contentions that when proceedings had been initiated on accounts of vengeance or after suppression of material facts, the proceedings ought to be quashed, reliance has been placed on Rajiv Thapar vs. Madan Lal Kapoor (2013) 3 SCC 330, Rashmi Chopra vs. State of U.P. (2019) 15 SCC 357, Dhanlakshmi vs. R Prasanna Kumar 1990 Supp SCC 686, MMST Chidambaram Chettiar vs. Shanmugam Pillai AIR 1938 Mad 129 and Vineet Kumar vs. State of U.P. (2017) 13 SCC 369.Reliance has also been placed on Pepsi Foods Ltd. vs. Special Judicial Magistrate (1998) 5 SCC 749.

10. The attention of this Court was also drawn to various complaints and orders placed as Annexures by the petitioners. The complaint on behalf of the complainant under sections 499 and 500 IPC as Complaint no. CC 4774 of 2019 is placed at Annexure P-2. The Criminal Complaint on behalf of M/S Schneider Prototyping India Pvt. Ltd through Mr. Sethuraj GS for registering the First Information Report and commencing investigation dated 07th September 2018 is placed at Annexure P-3. Another complaint dated 19th September 2018 filed on behalf of M/s Schneider Prototyping India Pvt. Limited against Mr. Pavan Gaur, Mr. Kanishak Kumar Mittal, M/s. Kedar Nath Agencies Private Limited, API Venture Private Limited and Mrs. Jagrani Gaur for registering as the First Information Report and Interrogation is placed at Annexure P-4. The FIR lodged on 14th November 2018 against Pavan Gaur is placed as Annexure P-5. Another criminal complaint dated 29th December 2018 on behalf of M/s. Schneider Prototyping India Pvt. Ltd is placed as Annexure P-

6.Criminal complaint no. CC 12501 of 2018 under sections 499/500 which was filed by Pavan Gaur was dismissed as being without merit on 20.12.2018 by the Order of the learned MM-03/South District. Both are placed as Annexure P-8 and P-9 respectively. A revision of this order was filed by the complainant in Crl. Rev 7/2019 placed as Annexure P-10. The Ld. Additional Sessions Judge (South), Saket Courts allowed the revision in respect of all proposed accused, except the company M/s. Schneider Prototyping India Pvt. Ltd. Vide the order dated 24.10.2019, the matter was remanded to learned Trial Court for fresh consideration and decision on the issue of summoning of the proposed accused. The same is placed as Annexure P-11. This order is impugned here.

11. Ms. Neelima Tripathi, learned counsel for the respondent on the other hand has urged that all the arguments submitted by the learned counsel for the petitioners were on merits and would ultimately form the defense of the accused, which were of no relevance at all while considering a petition under Section 482Cr.P.C. Moreover, no new material could be looked into by the court and the orders relied upon by the petitioners had to be ignored. The proceedings filed by the respondent were not vexatious as there were allegations in the letter which were intended to impact the reputation of the respondent. It was further submitted that the company was impleaded as a necessary party as its letter head had been used. It was also argued that material relevant for determination of the lis were duly placed before the learned MM. Two complaints were closed by the Noida Police and the EOW and the grant of bail in the FIR No. 819/2018 had no bearing on the present case.

12. Reliance has been placed on the decisions of the Supreme Court in State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568, Ganesh Narayan Hegde vs S. Bangarappa, (1995) 4 SCC 41and P. S. Meherhomji Vs. K. T. Vijay Kumar and Ors. (2015) 1 SCC788. Reliance was also placed on the decision of the Co-ordinate Bench of this Court in HT Media Ltd. v. K.T.S. Sarao & Anr., 2011 SCC OnLine Del 3815, in support of these contentions. It has therefore been prayed that the petition be dismissed.

13. It may be noted in the present case that material had been produced by the petitioners that support their case and which were not brought before the learned Trial Court at the time the summoning order was issued. The objection raised by the learned counsel for the respondent was that in State of Orissa Vs. Debendra Nath Padhi (supra), there was a specific injunction against the court looking into documents that did not form part of the charge-sheet or material placed by the complainant. However, in Rajiv Thapar (supra) the Supreme Court noted another observation in Debendra Nath Padhi's case as follows:-

> "26. This Court had an occasion to examine the matter in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] (incidentally the said judgment was heavily relied upon by the learned counsel for the respondent complainant), wherein it was held thus: (SCC p. 581, para 29) "29. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Courtunder Section 482 of the Code and Article 226 of the Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] ."

14. Relying further on another judgment of the Supreme Court in Rukmini Narvekar v. Vijaya Satardekar, (2008) 14 SCC 1, the court observed that the High Court could make such orders as may be necessary to prevent the abuse of any court or otherwise to secure the ends of justice and was free to consider even the material on behalf of the accused to arrive at a decision, including, whether the charge as framed could be maintained. Thereafter, the Supreme Court propounded a stepwise determination of whether the balance should tilt in the favour of the accused, to quash the criminal proceedings, or in favour of the prosecution, to continue. These steps have been elucidated in Para No.30 of the judgment as below:-

> "30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:
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> 30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality? 30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to

> reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false? 30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?
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> 30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
>
> 30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

15. I have heard the learned counsels for the parties and have perused the records as well the cited judgments.

16. It is no doubt true that the powers under Section 482 Cr.P.C. for quashing of an FIR or charge-sheet or any other criminal proceedings ought not to be used freely. The situations in which this power can be used have been illustrated in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 which are worth repeating:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. In the backdrop of these judgments of the Supreme Court, the objections raised by the learned counsel for the respondent that the pleas of the petitioners being their defence ought not to be not considered at this stage, cannot be acceded to.

18. Taking the plea that the petitioner No.2 being a juristic person cannot have mens rea, the learned MM has clearly overlooked the decision of the Supreme Court in Kalpath Rai (supra) and the Delhi High Court decision in Raymond Ltd. (supra).

19. Before proceeding further we may also consider Section 499 of Indian Penal Code. A plain reading of Section 499 would show that mens rea is essential to the commission of the offence inasmuch as the words spoken or intended to be read or published etc. must be with the intention to harm or knowing or having reason to believe that the imputation would harm. The company being a juristic person cannot have mens rea. Though in the case of Kalpnath Rai (supra), the question was of harboring a terrorist, it was held that a juristic person cannot have the required mens rea. Therefore, it was held that such an offence could not be ascribed to the company, i.e., M/s East West Travel Links. Similar was the view taken in Raymond Ltd.(supra) by a Coordinate Bench of this Court, when it held that mens rea under Section 499 read with Section 500 IPC cannot be possessed by the company Raymonds Limited. The situation is pari materia to this case, where petitioner No.2 is a company. Accordingly, it is clear that the learned Trial Court had fallen into error in summoning the petitioner No.2 for the commission of the offences under Section 499 read with Section 500.

20. Coming to the petitioner No.1, he is stated to be the author of the defamatory letter. Merely because the same is on the letter head of the petitioner No.2 would not make the petitioner No.2 liable in the absence of any mens rea that can be ascribed to it. A reading of this letter dated 10th December, 2018 would show that this is being addressed to "our valuable vendor" and is explained to be a response to the queries of "customers and vendors", who had contacted the petitioners about the situation at their office/factory located at B-125, Sector-88, Noida and the letter was to be a clarification. In the order of summoning, a part of this letter has been quoted by the learned MM emphasizing on certain words. In Para No.9, the learned Trial Court concluded that on a prima facie reading of this letter, it contains scurrilous allegations levelled against the complainant and were prima facie defamatory and "if they have been made without a valid cause, they may irreparably harm the reputation of the complainant". It is in this context that the suppression of material facts assumes great importance.

21. Prior to 10th December, 2018, certain incidents and litigations had commenced between the parties. Criminal complaints had been already registered in respect of the premises in September, 2018. In 2018 itself, the complainant/respondent had initiated proceedings before the National Company Law Tribunal (NCLT). Civil suits and writ petitions were also filed during 2019-2020. Yet the respondent, who was either the initiator of these proceedings or against whom the petitioners had initiated these proceedings and knew about them, had disclosed nothing to the court during the entire period from the date of filing of the complaint case on 09th April, 2019, through the examination of his witnesses, and, till the date when the impugned order was passed. It was to his knowledge that an FIR had already been actually registered against him on 14.11.2018 and his effort to get the same quashed was rejected by the Allahabad High Court on 11.12.2018. Had the learned MM the benefit of these facts, it is clear that the emphasis on the FIR having been registered and the reference to the lock out and take over of the building and the assets may not have appeared to the learned Trial Court to be unfound or "without a valid cause". Even during arguments before this Court, no explanation has been forthcoming about the non-disclosure of the truth about the FIR having being registered and a failed attempt by the respondent to get the same quashed.

22. In the background of the disputes between the parties, the attempt to protect business interests cannot be described as being per se defamatory. There being no dispute that the respondent had resigned as CEO of the petitioner No.2, the absence of that knowledge with the customers and vendors who could continue to deal with him, would result in claims against the petitioners. If despite the letters, the customers and the vendors continue to deal with the respondent, it would be clear that it would be at their own risk and cost. The remaining part of the said letter expounds on these facts and seen in that context, the averments in Para No. 1 of the letter on which much emphasis was laid by learned the MM, do not appear to be per se defamatory.

23. However, what weighs most with this Court is the fact that the respondent had suppressed very material information from the learned Trial Court. This is one such case in which the documents placed on the record by the petitioners have to be considered to determine, whether the complaint case is a sheer abuse of the process of court. Assessing the facts on the steps elucidated in Rajiv Thapar (supra), it is clear that the material placed on the record by the petitioner is of sterling and impeccable quality. These rule out the assertion of defamation levelled against the petitioners by the

respondent as being false. The material produced by the petitioners have not been refuted by the respondent, obviously, as they relate to proceedings before the court. In the circumstances, the continuation of the complaint case is unwarranted being an abuse of process of court.

24. Accordingly, to use the words of the Supreme Court, the judicial conscience of this Court is persuaded to quash these criminal proceedings in exercise of the powers vested under Section 482 Cr.P.C., as it is also clear that not only are the petitioners entitled to such relief but it would also save the precious time of the Court.

25. The petition is allowed. The proceedings in complaint case No.4774/2019 stand quashed.

26. The judgment be uploaded on the website forthwith.

(ASHA MENON) JUDGE APRIL 13, 2022/ak