

(1992) 04 BOM CK 0026
In the Bombay High Court
Case No : Criminal Appeal No. 47 of 1984

D.M. Seth

APPELLANT

Vs

Ganeshnarayan R. Podar, Chairman, Shree Shakati Mills Ltd.
and others

RESPONDENT

Date of Decision : 22-04-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 500

Citation : (1993) CriLJ 1899

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : V.T. Walawalkar, M/s. B.S. Purohit and P.K.B. Purohit, for the Appellant; Bhalchandra Mehta, Miss Kalpana R. Chawan and C.M. Kothari, Assistant Public Prosecutor, for the Respondent

Judgement

1. Given the limited time at their disposal and the tremendous pressure generated by the need to hear and decide serious cases where matters of life and liberty are involved, the law Courts will have to, as of necessity, devise a machinery for purposes of defending from "luxury litigation". One such mode would be through the imposition of exemplary costs in cases where it is demonstrated that the litigation, though couched in the garb of a complaint and embellished with the veneer of grave legal injury; in substance turns out to be a lever for settling personal scores and demands that cannot otherwise be officially stated. This proceeding is one such.

2. Two businessmen, one the appellant before me, and the other, original accused No. 1, have carried on a violent litigation before the Court of the Additional Chief Metropolitan Magistrate in Don Quixote fashion for 5 1/2 long years between 2-11-1977 and 18-5-1983, when the trial Court at least acquitted the accused. Then came the turn of this poor Court with the complainant filing the present appeal against the acquittal which was admitted by Sharad Monohar, J. (as he then was) after which the matter has been pending since the year

1984. It was called out more than once and since the parties absent, I went through the paper-book and dictated an order holding that there was no merit in the appeal and that it deserved to be dismissed. I also took the view that the proceeding was devoid of substance and that the machinery of the Criminal Court was being used as a means to ventilate feelings and disputes that had their genesis in certain business transactions and consequently, for having misused the process of the Criminal Court the appellant should be ordered to pay exemplary costs of Rs. 20,000/-.

3. Shortly after the order was passed, the learned counsel for the appellant appeared and informed me that there was much substance in the appeal, that it involved important points of law and that in any event the Court ought not to refuse to hear the parties whereupon I set aside the order of dismissal and place the matter on Board for rehearing. This appeal was thereafter argued by learned counsel on both sides on innumerable dates of hearing spread over several months. The learned counsel have relied on a large number of authorities on either side and have also filed elaborate written arguments, all of which, I shall refer to only to the extent that is necessary. To my mind, this appeal presents nothing more than a storm in a tea cup raised one interesting aspect of law relating to defamation which, in the present day context, requires to be summarised as follows :

4. Whether it is not a requirement of the times for a Court to view the defamatory statement in the context of the background of the parties and the transactions indulged in by them and to relatively assess whether in that context, defamation can be alleged. Conversely, whether the offending statements, even if when viewed from abstract angle appear defamatory, could cease to be actionable by virtue of the fact that it would cause no harm to the complainant who is so placed in life that the reputation he claims could not suffer any damage.

5. Before answering this issue, it would be useful to recount the relevant facts. The present appellant D. M. Seth had filed a complaint before the Metropolitan Magistrate's Court against Ganesh Narayan, R. Poddar, Chairman of Shri Shakti Mills Ltd., and R. N. Joshi, Secretary of Poddar Sons Pvt. Ltd., alleging the commission of an offence punishable under S. 500 read with S. 34 of the Indian Penal Code. The complainant alleged that the accused No. 1 who is a businessman was the Chairman of the Shri Shakti Mills Ltd., and two other companies viz., Poddar Sons Pvt. Ltd., and National Traders Pvt. Ltd., all of which were essentially family concerns. It is also undisputed that at the relevant time, the second accused was the Secretary of Poddar Sons Pvt. Ltd. The complainant was appointed Secretary and Finance Controller of Shri Shakti Mills Ltd., with effect from 1-5-1972. He contends that he was required to work under the directions of accused No. 1 and that it was never his function to advise him as he had retained a Chartered Accountant Shri Bansi Mehta for this purpose. He also contends that he used to act on the oral instructions of accused No. 1 most of the time and that he was duty bound to carry out such directions. He maintains

that accused No. 2 had put in more than 20 years" service with the Company and that he was the confidant of accused No. 1. What followed thereafter is amazing because even though one is aware of the manner in which sharp practices are indulged in by businessmen, this is one of the unique instances where such activities are openly referred to in a litigation and stoutly defended on the specious ground that they are not on the wrong side of the law.

6. It is the case of the appellant that for a variety of reasons, starting with the budget proposals of that year to the inflationary trends and the condition of the market all being contributions, that accused No. 1's company Shri Shakti Mills Ltd., was facing financial stringencies. According to him, accused No. 1 suggested that a series of transactions should be routed on paper through firm of persons closely known and that by showing such contrived transactions, the documents so created be negotiated through the Banks and substantial finance be generated. There is considerable dispute with regard to the question as to whether the suggestion came from the accused No. 1 or whether the creation of bogus firms and manipulation of these paper transactions was the brain child of the complainant but that aspect of the matter is irrelevant. Initially, it appears that two of the firms viz., Bombay Synthetic Corporation and Bhupendra & Co., belonging to Shri Somchand Patel, a business associate of accused No. 1 were used. Thereafter, two firms by the name of Lovely Traders & Co., and Fashion Sellers, both of which belong to the complainant's wife were utilised for the transaction. An indication of the type of transaction indulged in is illustrative from the complainant's own averment wherein he stated : "Thereafter the said Bombay Synthetic Corporation and Bhupendra & Co., sold goods purchased by them from Shri Shakti Mills of Podar Sons Pvt. Ltd., or to M/s. National Traders Pvt. Ltd., who in turn could pledge the goods with their bankers so as to further funds."

7. The description that follows in the subsequent paragraphs of the complaint is indicative of the gumption of the complainant who unabashedly describes how as many as 17 virtually bogus concerns were used for the sole purpose of creating false documents and transactions on the basis of which huge amounts of money were obtained from the Banks. Even if one were to ignore the remaining transactions, mercifully, the complainant admits that at least eight of these firms belong to his relatives. The modus operandi is clear in so far as the complainant was in overall control of these transactions and it is immaterial as to whether it was at the behest of accused No. 1 or even in collusion with him that these fraudulent acts were indulged in. The complainant laments that in October, 1974, after what he considers as a magnificent performance by him, for certain reasons, he was required to resign, and he places great reliance on the certificate issued by the accused No. 1 who has complimented him in glowing terms. The brazenness with which these statements are made before a Court of law is startling but as I shall point out presently, the main argument of the complainant was that the money obtained from the Banks was paid to the Banks with interest, that the Banks, therefore, lost nothing in the course of these

transactions and consequently, the indulgence in these activities cannot be faulted.

8. It appears that pursuant to the complainant leaving the service of accused No. 1, that it became necessary to settle the accounts relating to the eight firms which ostensibly belonged to his relations but in all probability were his own creations. Apparently, disputes arose and this had culminated in the filing of Company Petition No. 290 of 1975 for winding up of M/s. Podar Sons Pvt. Ltd., on the ground of non-payment of a sum of Rupees 29,155/-. In that proceeding, an affidavit in reply on behalf of the company dated 9th September, 1975 was filed by R. N. Joshi, Secretary of the company and it is necessary to reproduce paragraphs 7(c) to 7(i) of the said affidavit which read as follows :

"7(c) The said D. M. Sheth however abused the Trust and the confidence which was vested in by the said Ganesh Narayan R. Podar and the management of the respondents. Without the knowledge or consent of the Directors of the respondents or of the said Mr. G. R. Podar, the said D. M. Sheth floated certain firms and commenced dealings between the respondents and such firms. In all these firms which were his creations, the partners thereof were either members of the family of the said D. M. Sheth and or his close relatives. The petitioners are one such creation of the said D. M. Sheth. The names of the other such concerns which were floated by the said D. M. Sheth are as follows :

1. M/s. Lucky Traders & Company,
2. M/s. Artificial Yarn Fabrics,
3. M/s. Shah Jamnadas Mogatram,
4. M/s. Fashion Sellers,
5. M/s. Manmade Textile & Yarn, and
6. M/s. Art Silk Fabrics and Yarn.

Out of these, Messers Shah Jamnadas Mogatram and M/s. Lucky Traders & Company are sole proprietary concerns. Mrs. Taraben Sheth who is the wife of the said D. M. Sheth is the sole proprietor of M/s. Lucky Traders & Company and K. J. Shah who is the maternal uncle of the said D. M. Sheth is the sole proprietor of M/s. Jamnadas Mogatram. In so far as the petitioners are concerned, in the petitioners' firm one Hasmukhlal Ganpatram Sheth and one Mohanlal Ganpatram Sheth are the partners. The said Mohanlal Ganpatram is the father of the said D. M. Sheth and the said Hasmukhlal Ganpatram Sheth is the uncle of the said D. M. Sheth. The said partnership of the petitioners firm commenced on or about the 27th October, 1973. Two minors have also been admitted to the benefits of the said partnership of which one is the daughter of the said D. M. Sheth, viz., Neepta Dashratlal Seth and the other is the son of the said Hasmukhlal G. Sheth. All the firms which were created by the said Dashratlal M. Sheth carry on business from the same address, which is the

residential address of the said D. M. Sheth.

7(c) During the period from September, 1973 to August, 1974, several transactions took place between one or more of the said firms floated by the said D. M. Sheth on the one hand and the respondents and/or Shakti and/or National Traders Private Limited on the other hand without the knowledge or consent of the Directors of the respondents, Shakti or National Traders Private Limited or the said Shri Ganeshnarayan R. Podar. These transactions were in the nature of the sale of the goods by one such party to the other. Sometimes, goods sold by one party to the other were, in turn, sold to another party. Sometimes, the moneys were paid by one party to the other by way of hand-loan. Sometime, there was an intermingling or combination of more than two parties in respect of same transactions. As stated hereinabove, however, all these were being done by and/or at the behest of the said D. M. Sheth, without the knowledge or consent of the respondents, Shakti, National Traders Private Limited or the said G. R. Podar. As a result of such transactions and/or dealings, the said firm floated by the said D. M. Sheth earned substantial amount running into lakhs of rupees in respect of the said transactions. When such unauthorised dealings came to the knowledge of the respondents and Shakti, the first step which was taken by the respondents and Shakti was to take away the power of the said D. M. Sheth to operate their respective bank accounts or that of any other company or concern forming part of the some group. When the said D. M. Sheth was informed that the management had become aware of his fraudulent deeds and asked for an explanation, he admitted that he had effected various transactions without the knowledge of or obtaining the consent of the respondents or Shakti or National Traders Private Limited or the said Ganeshnarayan R. Podar. He, however, could not give any satisfactory explanation as to why he had done so. He also offered to submit his resignation and in fact, submitted the same, but at the same time pleaded that, before the resignation becomes effective, accounts of all his said concerns should be taken and finalised. When asked as to what according to him could be the approximate result on such account being taken, he stated that, on taking such accounts, a few thousand of rupees might be found to be payable by either the respondents or Shakti or the said National Traders Private Limited to some of his said concerns. Believing the statement made by him as aforesaid, accounts were taken of all the said concerns and their dealings with Shakti, National Traders Private Limited and/or the respondents and on taking such accounts, it was agreed that Shakti, National Traders Private Limited and/or the respondents would pay an amount of about Rs. 2,51,181.72 ps. to the said concerns of the said D. M. Sheth. It was also agreed that a sum of Rs. 40,000/- would be paid to Messrs Artificial Yarn and Fabrics of National Traders Private Limited on or before 31-10-1974. Although the said amount of Rs. 2,51,181.72 ps. was not at all anything near to the representations made by him as aforesaid, the same amount was agreed to be paid and paid in order partly to buy peace and partly to put an end to an unfortunate matter and partly to avoid a lengthy and costly litigation which the said D. M. Sheth was threatening. Hereto annexed

and marked Ex. I is a summary of the debit and credit balance on taking of such accounts between the respondents, Shakti and National Traders Private Limited on the one hand and the said concerns floated by the said D. M. Sheth on the other.

7(f) On or about 30th September, 1974, the position of various accounts, summaries as in Exhibit "I" hereto, was confirmed, admitted, acknowledged, accepted and approved by the various concerns of the said D. M. Sheth and the said D. M. Sheth himself.

7(i) Anticipating that the respondent will disclose to this Hon"ble Court the various unauthorised transactions entered into by the said D. M. Sheth involving Shakti, the respondents and/or National Traders Private Limited, with one or more of his said concerns as stated hereinabove the said D. M. Sheth on 19th August, 1975 wrote a personal letter to the said G. R. Podar whereby he impliedly admitted that he has entered into such unauthorised transactions but falsely alleged that whatever he had done was with the knowledge or consent of the said G. R. Podar. This clearly goes to show that the said letter dated 19th August, 1975 addressed by the said D. M. Sheth is an after thought. The attorneys of the said Ganeshnarayan R. Podar have given a reply to the said D. M. Sheth denying the false allegations contained therein. Hereto annexed and marked Exhibit III (collectively) is a copy of the said letter dated 19th August, 1975 addressed by the said D. M. Sheth to the said G. R. Podar as also a copy of the said letter addressed in reply thereto by the attorneys of the said G. R. Podar." (reproduced as recorded)

9. On 15th January, 1976, Aggarwal J. (as he then was) dismissed the winding up petition on the ground that there was a prima facie dispute about the liability. On 18th June, 1986, Shri Trading Company filed a suit bearing No. 1084 of 1976 in the High Court against M/s. Podar Sons Pvt. Ltd., for recovery of the sum of Rs. 29,155/- and interest totalling in all Rs. 35,538/-.

10. The complainant takes exception to the following statements which are contained in paragraphs 7(c) and 7(e) of the affidavit in reply filed in Company Petition No. 290 of 1975 which read as follows :

"7(c) The said D. M. Sheth however abused the trust and the confidence which was vested in by the said Ganeshnarayan R. Podar and the management of the respondents. Without the knowledge or consent of the Directors of the respondents or of the said Mr. G. R. Podar, the said D. M. Sheth floated certain firms and commenced dealings between the respondents and such firms. In all these firms which were his creations, the partners thereof were either members of the family of the said D. M. Sheth and/or his close relatives.

7(e) During the period from September 1973 to August 1974, several transactions took place between one or more of the said firms floated by the said D. M. Sheth on the one hand and the respondents and/or Shakti and/or National Traders Pvt. Limited on the other hand without the knowledge or consent of the

Directors of the respondents, Shakti or National Traders Private Limited or the said Ganeshnarayan R. Podar As stated hereinabove, however, all these were being done by and/or at the behest of the said D. M. Sheth, without the knowledge or consent of the respondents Shakti, National Traders Private Limited or the said G. R. Podar

"When the said D. M. Sheth was informed that the management had become aware of his fraudulent deeds and asked for an explanation, he admitted that he had effected various transactions without the knowledge of or obtaining the consent of the respondents or Shakti or National Traders Private Limited or the said Ganeshnarayan R. Podar. He, however, could not give any satisfactory explanation as to why he had done so."

(reproduced as recorded)

11. There is on record rather voluminous verbose and at times unintelligible correspondence between the two parties in relation to the alleged defamation and the denial thereof, as also been the respective Attorneys. It is obvious, that there was a large stake and from the nature of the transaction, there is little dispute about the fact that reading between the lines that the essential war between the parties obviously related to huge unaccounted transactions and that so-called charge of defamation was nothing more than a handle or rather an arm twister .The dispute thereafter manifested itself in the form of a complaint which was filed on 2nd November, 1977 and continued for something like eight years. The manner in which this proceeding was conducted, starting with the complaint that can beat few for its verbosity, to the oral evidence which went on in almost unending fashion not to mention the number of documents with which the record was burdened and thereafter notes of arguments filed on both sides, all of which together consumed virtually thousands of precious hours of judicial time. The learned Magistrate who finally decided the matter came to the conclusion that the aforesaid statements were in fact defamatory but that the accused was covered by Exception 9 to S. 499 and, therefore, that no offence has been made out. The complainant, who is the appellant before me, has thereafter preferred the present appeal.

12. This appeal has been argued at great length by the learned counsel on both sides. To start with, Mr. Walawalkar, learned counsel representing the appellant insisted on spending several dates of hearing, going through the record and the compilations relating to this proceeding which includes the correspondence between the parties which, in my opinion, is absolutely painful. Thereafter, my attention was drawn to several provisions of law and a host of authorities were relied upon in support of these propositions. Mr. Walawalkar has argued the matter extremely well and he deserves to be complimented for his ability and thoroughness. I was required to hear this matter over numerous days between the months of August and December 1991 after which the judgment had to be reserved since the parties desired to file compilations of their arguments and counter-arguments and copies of the decisions on which reliance was placed.

Undoubtedly, the appellant has a right to be heard and, therefore, had to be shown the requisite indulgence. To what extent, however, such a litigant is entitled to utilise judicial time which is extremely precious is a matter for serious concern because, in the process, the appellant is virtually preventing the disposal of a large number of other proceedings where the litigants are virtually waiting for justice. It is inevitable in these proceedings, if one party is allowed to prosecute a case of the present type that the other one will most certainly have to be given the opportunity of defending himself and the Court becomes almost a helpless umpire while the warring litigants slog it out.

13. Mr. Walawalkar has capitalised on the fact that the learned trial Magistrate has recorded a finding to the effect that the impugned statements contained in the affidavit filed by accused No. 2 were in fact defamatory. Starting with this premise, he contends that the short point for decision in this appeal is confined to the question as to whether or not Exception 9 to S. 499, I.P.C. can save the accused from a conviction. I shall deal with the aspect relating to Exception 9 subsequently, because, it is essential to decide the first issue since Mr. Mehta, learned counsel appearing on behalf of the accused has contended that as far as accused No. 1 is concerned, that there is no case made out against him even on paper. He points out that admittedly, the affidavit was filed by accused No. 2 who is an officer of the company, who was in the know of things, being an old employee and a person who was looking after the affairs of the company during the relevant period. There is nothing in the affidavit to indicate that accused No. 2 was instructed by accused No. 1 or that he was acting under his directions. Mr. Mehta further submits that merely because No. 1 was the head of the company or because he might have been in the know of the fact that certain litigation was pending or furthermore, that the company's solicitors were corresponding on his behalf cannot ipso facto saddle him with the criminal liability in respect of statements made on behalf of the company and the language used by accused No. 2. There appears to be considerable justification in this submission because nowhere in the mammoth record of this case do we find anything to justify the allegation that the statements in question were made under the instructions or directions of accused No. 1. Accused No. 2 had filed the affidavit in his own right as an officer of the company and to this extent, I do not see how accused No. 1 can be linked to that act. The filing of a company petition for winding up is a serious matter and Mr. Walawalkar may be justified in stating that accused No. 1 must have known about it. Equally correct is the fact that this petition had been preceded by detailed negotiations relating to settlement of accounts which must have concerned accused No. 1. That still would not justify the charge that accused No. 1 had instructed accused No. 2 to make specific allegations in the affidavit. That he could have done so is a matter of pure conjecture and it is equally no argument that being vitally concerned with his own company, he would do his very best to hit back at the complainant. One needs to take cognizance of the fact that this was a proceeding directed against the winding up of the company and to that extent, it was very necessary for the defence to set

out before the Court all facts that are relevant for an adjudication of the dispute. I shall deal more elaborately with this aspect of the matter when I come to the consideration of Exception 9. Suffice it to say at this stage that even if accused No. 2 is a power of attorney holder or agent of accused No. 1 or acting on his behalf, it would still not have been permissible to fasten any criminal liability on accused No. 1 for the acts of accused No. 2, unless it could be established that the offence had taken place with the knowledge, collusion or abetment of accused No. 1. In these circumstances, as far as accused No. 1 is concerned, the order of acquittal requires to be confirmed.

14. For purposes of dealing with the case of accused No. 2, it would be essential to examine, in the first instance, the material that has been placed before the Court in support of the charge that the allegations contained in the impugned statements are in fact defamatory. I have set out in some detail, the background of the transactions. Mr. Walawalkar drew my attention to several provisions of the Negotiable Instruments Act and pointed out that it is wrong to allege that accommodation transactions are essentially illegal. In fact, Mr. Walawalkar devoted a considerable part of his arguments to an examination of these provisions and thereafter for purposes of citing case-law. To summarise his arguments, Mr. Walawalkar contended that the transactions attributed to the complainant viz., the routing of sales and documents through bogus concerns required to be viewed at from an entirely different perspective. Relying on the concept of wrongful loss as defined in the I.P.C., Mr. Walawalkar submitted that in the ultimate result, it would have to be seen as to whether any of the financial institutions viz., the Banks did in fact suffer any wrongful loss. He contended that in the absence of this, it would be wrong to allege that the transactions were illegal. In substance, his submission is that the test of the legality of a transaction is dependent entirely on whether it could be defined as being fraudulent, viz., one having resulted in wrongful loss. In so far as all the repayments were made to the Banks and the interest also having been paid, he submits that there is no warrant to treat these as illegal transactions. As against this position, Mr. Mehta has submitted that the complainant has unequivocally admitted in his cross-examination that the firms were bogus and his only justification is that the idea emanated from accused No. 1 and that he was acting under his instructions and directions at all times. He has also demonstrated to me from the evidence on record that the eight firms of the complainant did not merely lend their names to the transactions but that they received substantial benefits by way of earnings in these transactions. Mr. Mehta has also drawn my attention to the fact that the complainant was the signatory as far as the Bank accounts and documents are concerned, that he was in over-all charge of these transactions and having established this, that the defence has also in the course of cross-examination been able to point out that the complainant, having regard to the aforesaid situation had sufficient scope of function independently. That he did so is not a matter of inference but something which emerges directly from the record of this case. It is in this context, that one would have to first establish

the true nature and the real colour of these transactions. Having heard learned Counsel on both sides, having looked at the position in law and having considered the case law that was cited, there is little doubt in my mind that these transactions were colourable, that they were sharp and that they did result in substantial gains to the complainant and accused No. 1, which gains would clearly answer to the definition of wrongful gain. The fact that in the ultimate analysis the Banks got their money back with interest is not the criterion and the fact that in a given situation, the concept of accommodation is permissible under the Negotiable Instruments Act is not the answer. These justifications, to my mind are hollow because they can never be good ground for a situation where bogus firms are created and fabricated documents emanating to and from these firms are negotiated with the Banks and on the basis of bogus transactions, gains are generated. That these practices were fraudulent and dishonest is an understatement and in this view of the matter, the question that arises is as to whether the statements contained in the offending paragraphs can at all be categorised as defamatory.

15. There is a special angle from which these statements will have to be judged. In the first instance, having indulged in transactions of this type, one would have assumed that the complainant would have avoided going anywhere near a Court of law. A specious argument was advanced by Mr. Walawalkar when he submitted that the company petition was not filed by the present complainant but by his relatives. That to my mind was a subterfuge. That the firms in question were essentially managed and manipulated by the complainant is obvious though undoubtedly, the proprietors, partners or directors, as the case may be, of those firms were parties on paper. The complainant has admitted that they were close relations of his. It is, therefore, useless to argue that the litigation was between the third party and the accused because in actual fact, it was virtually the complainant's own litigation. I do not attach any importance, therefore, to the argument that the accused had no business to make statements about the complainant in a litigation concerning third parties.

16. As indicated by me, the special angle which a Court needs to adopt while evaluating a situation of the present type is the fact that an offence is alleged in respect of pleadings that are part of Court proceedings. It is not unknown to criminal jurisprudence for such situations to be actionable, such as when wanton, reckless and unnecessary allegations are included in pleadings. Where an application was made for the winding up of the company, it was essential for the company to have defended the matter. The petitioner claimed from the company a certain amount of money which amount was generated in the course of certain admittedly tainted transactions. To my mind, there was no means of defending that proceeding without pointing out to the Court the real nature of the transactions that the parties were involved in and the reason why the Court ought not to grant any relief in the matter. The complexion of the transactions themselves being fraudulent, any reference to those dealings and to the complainant who was handling those proceedings, to my mind, would not be a

case of the pot calling the kettle was meekly pointing out that the pot was also of the same colour. One needs to realise that litigants and Counsel are of necessity required to be clothed with a certain degree of licence in relation to the conduct of a judicial proceeding where it may be legitimately necessary to make allegations or counter-allegations. As long as the record indicates that there was valid justification for this, there would be a total absence of the ingredient of malice and in that event, there can be no question of alleging defamation. To my mind, this is really the crux of the matter and the learned trial Magistrate has completely overlooked this fact. He ought to have taken note of the fact that the statements in the two paragraphs are not to be viewed at in a vacuum, in isolation, or de hors the background of the case and the transactions in which the parties were involved in but from the angle that a legal proceeding was being defended and it was necessary to set out with some degree of correctness the defence which the company had.

17. I shall briefly deal with another argument canvassed by Mr. Walawalkar wherein he stated that the allegations were unnecessary for the defence. Even if the company disputed the amount, there was no need to make personal allegations and imputations against the complainant. He supports this argument by the fact that in the correspondence exchanged between the parties, these allegations have been repeated numerous times. In the first instance, the correspondence is not the subject matter of the complaint but considering that circumstance as an indication of malice as alleged by Mr. Walawalkar, I need to record that the statements in the affidavit and in the correspondence are sufficiently restrained, the language used is also not out of the way and consequently, it would not be permissible to conclude that there were either any ulterior motives or malice behind the making of the statements in question.

18. Mr. Walawalkar has cited a number of rulings of different Courts, including the Supreme Court, but in the view that I have taken, it is unnecessary for me to refer to those judgments. The first set of them are in support of his proposition that the nature of the transactions indulged in by the 17 firms cannot be considered to be illegal and that the defence of accused No. 1 that these should be categorised as dishonest and fraudulent is uncalled for. This proceeding does not concern any of those transactions and, therefore, the involved arguments spread over several weeks and months will not assist the complainant one bit because, as already observed by me, the question is not as to whether those transactions constituted proven criminal offences but the limited aspect before me is confined to the character of those transactions and whether the conduct of the complainant who was the architect of those transactions were of his own violation or under the directions of accused No. 1 or even in collusion with him, can pass the test of a fair scrutiny.

19. The next head of decisions, which again, I do not consider it necessary to refer to in detail, are all in relation to S. 499 but each of those cases deals with a particular set of facts. The fundamental issue stressed by Mr. Walawalkar was

with regard to whether the accused is covered by Exception 9. In the view that I have taken, I am not prepared to accept that the statements can be categorised as defamatory by a judicial forum and, therefore, the applicability or otherwise of Exception 9 is wholly academic. It was also contended that the burden of proof rests squarely on the accused. Once it is established that the offensive material has emanated from the accused, even applying this principle, I do not see how a conviction is possible in the present proceedings because the complainant has been cross-examined at almost interminable length and the admissions that have been obtained from him are so damaging that it was wholly unnecessary for the accused to lead any further defence evidence. In a criminal proceeding, the defence can and usually is established in the course of the cross-examination.

20. Under these circumstances, the order of acquittal stands confirmed though for different reasons, and the appeal is dismissed. I have, however, observed that this was a proceeding in which a businessman has utilised the precious time of the trial Court over a span of seven years and not being satisfied with that exercise, had indulged himself in the luxury of dragging on the litigation before this Court once again through an unduly large number of hearings. That the complaint is wholly and thoroughly devoid of substance would be an understatement in addition to which the manner in which the litigation was carried on would require me to define it was a vexatious litigation. I would qualify that the two litigants who undoubtedly have many scores to settle ought not to have used the judicial forums for this purpose but the vexatious ness would apply to the judicial forums that have been subjected to it in the course of this litigation. The Courts are already over-burdened and, therefore, cannot take a lenient view of proceedings of this type.

21. It is unusual for costs to be awarded and quantified in criminal proceedings but this Court will have to make a departure from the normal rule in the present case by awarding exemplary costs principally in order that this should act as a deterrent to litigants who attempt to misuse the Court machinery. In my initial order, I had quantified the costs at Rs. 20,000/-. That order is maintained and the complainant is directed to pay to the State, and not to the accused, costs quantified in the sum of Rs. 20,000/-. These costs shall be deposited with the Registrar of this Court within a period of eight weeks and shall be condition precedent for the filing of any further proceedings in this matter.

22. Appeal dismissed with costs.

23. Appeal dismissed.