
(2014) 04 CAL CK 0010
In the Calcutta High Court
Case No : CRR No. 3744 of 2013

Rakesh Aggarwal and Another	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 120B, 34, 499, 500

Citation : (2014) 04 CAL CK 0010

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Shiladitya Sanyal, Mr. Arindam Jana, Mr. Chittapriya Ghosh and Mr. Sudhakar Thakur, Advocate for the Appellant; Sudipta Moitra, Mr. Ayan Bhattacharyya, Ms. Sreeparna Das and Mr. Arijit Ghosh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarun Kumar Gupta, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 for quashing of a complaint dated 16th January, 2013 u/s 500/120B/34 Indian Penal Code being Case No. C-993 of 2013 pending in the court of learned Chief Metropolitan Magistrate, Calcutta and for other consequential reliefs.

2. It is the case of the petitioners that a long standing dispute was going on between the petitioners in one hand and O.P. No. 2 Company and O.P. No. 3 who was carrying on business at O.P. No. 2 Company's Registered Office at Calcutta on the strength of a power of attorney of Company's Director and Authorized representative Ravindra Maheshwari. Said dispute was going on over the title as well as manner of possession of the building situated at Plot No. 42 and 44 Sunder Nagar, New Delhi. Several civil suits were pending between the parties in the Delhi High Court as well as in the Subordinate Court at Delhi on that score. It is further case that without any title to the property and in violation of the

restrain order of the Delhi High Court O.P. No. 2 Company managed to secure a separate electric meter in the ground floor of the property and was also causing problems in regular electric supply to the 1st floor of the property being in possession of the petitioners by tampering the meter illegally. On this score learned counsel of the petitioners sent several legal notices to the O.P. Nos. 2 and 3. One such legal notice was a notice dated 24th of August, 2012 wherein the illegal acts of the O.P. Nos. 2 and 3 were pointed out. In counter blast to the litigations of Delhi the O.P. Nos. 2 and 3 filed a suit being C.S. No. 7 of 2012 against the present petitioners in the Calcutta High Court seeking damages as well as injunction of the circulation of letters dated 06.08.2012, 18.08.2012, 24.08.2012 and 29.04.2012. O.P. Nos. 2 and 3 further filed the present criminal case No. C-993 of 2013 against the present petitioners in the Court of learned Chief Metropolitan Magistrate, Calcutta alleging defamation made by issuing and circulating said legal notice dated 24.08.2012. The allegations in said complaint case alleging defamation were all false and the case should be quashed.

3. Mr. Shiladitya Sanyal appearing for the petitioners submits that sending of legal notice ventilating grievance of the petitioners by their lawyer cannot be a ground for filing a case of defamation. He further submits that on the basis of said legal notice dated 24.08.2012 and other notices a specific suit being Suit No. 436 of 2012 has been filed in the Court of learned Additional District Judge, Saket, New Delhi and as such no complaint alleging contents of said legal notice as defamatory can be permitted to be filed. He next submits that the notice sent to the Calcutta Office of the O.P. No. 2 Company returned unserved and hence there is no cause of action at Calcutta for filing the case of defamation. He prays for quashing the criminal proceeding.

4. In support of his contention he refers the case of M/s. Nishka Properties (Pvt.) Ltd. and anr. vs. State of West Bengal and Anr. reported in (2013) 3 C Cr LR (Cal) 691, Dipankar Bagchi Vs. The State of West Bengal and Another , Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, .

5. Mr. Sudipta Moitra, learned counsel appearing for the private O.Ps. on the other hand, submits that in a case of defamation the issue of territorial jurisdiction is volatile. He next submits that in the complaint there are specific averments as to how the legal notice was defamatory and that after making necessary enquiry u/s 202 Cr.P.C. learned trial court being prima facie satisfied about the materials, issued process. He next submits that the question of service/non-service is a question of fact and cannot be adjudicated during hearing u/s 482 Cr.P.C. He next submits even if the averments made in the notice are found not to be defamatory per se even then the complainant should be given liberty to prove his case in trial and his case should not be thrown away at the very outset

6. In support of his contention he refers case laws reported in John Thomas Vs. Dr. K. Jagadeesan, , M.A. Rumugam Vs. Kittu @ Krishnamoorthy, , Jeffrey J. Diermeier and Another Vs. State of West Bengal and Another, , Munithayamma and Another Vs. Muddobalappa, , Trichinopoly Ramaswamy Aradhanani and Others

Vs. Kripa Shanker Bhargava, , Prabhakaran Vs. Gangadharan,

7. I have considered the submissions made by learned counsels of the parties and perused the case laws referred by them. There is no denial that learned counsel of the petitioners sent a legal notice dated 24th of August, 2012 wherein there were allegations against the private O.Ps. and other directors of O.P. No. 2 that they by using muscle power, money power and social connections caused hindrance in peaceful enjoyment of the property by the petitioners and were also trying to illegally evict the petitioners from the suit property. Even if those allegations are not per se defamatory but even in that case also the private O.P.s being complainants should get an opportunity to prove the same according to law. It appears that on receipt of the complaint and after taking cognizance of the offence u/s 500 Indian Penal Code, the complainant was examined on solemn affirmation. Thereafter, an enquiry was held by a police officer u/s 202 Cr.P.C. He filed a report stating that he examined the complainant and another witness and was prima facie satisfied about commission of offence of defamation. On the basis of said statement of the complainant under solemn affirmation and the report u/s 202 Cr.P.C. learned trial court issued the process against the present petitioners in said complaint case u/s 500 Indian Penal Code. It appears from the submission of Mr. Sanyal that he tried to make out a case that imputations made in legal notice were in good faith for protection of the interest of the petitioners coming within ninth exception u/s 499 Indian Penal Code. The offence "defamation" was defined u/s 499 of the Indian Penal Code. As many as ten exceptions were noted therein as good defences against an allegation of "defamation".

8. Ninth exception runs as follows:

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 the person making it, or of any other person, or for the public good.

9. Admittedly, such defence raises question of fact and requires proof by adducing evidence. In this connection it is pertinent to note that over the self-same legal notice and some other notices in the same line, a specific civil suit of damages was filed by the private O.P.s at Calcutta High Court wherein the present petitioners took the plea of want of jurisdiction. It appears that the Calcutta High Court in said civil suit was pleased to pass an order of injunction restraining present petitioners from further publication and/or circulation of said notices. The cases referred by Mr. Sanyal have not much relevance in this case as facts of those cases are quite different from the fact of the present case. In the case of M/s. Nishka Properties (Pvt.) Ltd. (supra) the proceeding u/s 500 I.P.C. was quashed on the ground that accused company being a juristic person had no mens rea to defame the complainant and that the process was issued against the accused staying beyond the territorial jurisdiction of the court without

making mandatory enquiry u/s 202 Cr.P.C.

10. In the case of Dipankar Bagchi (supra) no witness stated in their evidence that due to such imputation the moral and intellectual character of the complainant was lowered down in their estimation.

11. In the case of Rajendra Kumar Sitaram Pande (supra) it was found that the imputations made in the document which were alleged to be defamatory, were rather found to be true during official enquiry. As the facts of those case laws were different from the fact of the present case those case laws had no application in the present case.

12. Accordingly, I am of opinion that the present revisional application has no merit. However, I make it clear that this court had no occasion to go into the merit of the claim and counter claim of the parties and that all the questions are kept open to be decided by the trial court according to law.

13. Accordingly, this revisional application is dismissed on contest but without costs.

14. Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.