

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PANEL CODE

Crl.M.C.3828/2007 and CMA 14040/2007

Pronounced on: February 06, 2009

STANDARD CHARTERED BANK PETITIONER
Through : Mr. Sanjay Gupta, Advocate
Mr. Ajay Monga, Advocate
Mr. Manish Paliwal, Advocate

Versus

VINAY KUMAR SOOD and ORS. RESPONDENTS
Through : Mr. Sidhartha Yadav, Adv. for
R-1. Mr. O.P. Saxena, APP.

ARUNA SURESH, J.

1. Respondent Vinay Kumar Sood filed a complaint against the petitioner, Standard Chartered Bank as well as four others being its employees before the Metropolitan Magistrate alleging that the petitioner Bank had been repeatedly corresponding with him and demanding a sum of Rs.3,62,373.01, being the outstanding balance amount in his credit account which he never had with the petitioner bank. During the course of correspondence petitioner sent a telegram dated 17.9.2002; contents therein were allegedly defamatory in nature. One of the official of the bank i.e. Mr. Jishant Narang (accused No.4) had telephoned his wife on 21.9.2002 intimating her that the complainant had an account with the petitioner bank (accused No.1) in which there were no outstanding dues to be claimed from the petitioner and the bank's letters if any be ignored. On receipt of this telephone call wife of the complainant made an inquiry from friends and employees in the office of the complainant. The complainant also received telephone call at his office and business place from accused No.4 and 5, namely, Mr. Jishant Narang and Mr. Sudhanshu Gupta. Complainant found credit card statement dated 28.7.2002 and correspondence dated 19.8.2002, 17.9.2002, 21.9.2002, 4.10.2002, 7.10.2002 and other written and oral communications as defamatory and maliciously made with a view to tarnish his image, integrity, respect and reputation amongst his family, social circle, friends, his colleagues and other business circle. Complainant alleged that an offence under Section 499/500 Indian Penal Code (hereinafter referred to as 'IPC') was made out against the accused persons and they should be accordingly summoned and convicted.

2. After appreciating the deposition of the witnesses and the relevant documents available on record, the court found sufficient material to proceed against the accused persons for the offence punishable under Section 500 IPC and accordingly issued summons for appearance of the accused persons in the court.

3. Aggrieved by the said order of summoning dated 20.12.2006, the present petition has been filed by the petitioner Bank. It is made clear that other accused persons who happen to be the employees of the bank are not a party to this petition and have not challenged the impugned summoning order qua them.

4. Complainant had earlier filed a suit for damages against the petitioner bank on 13.11.2002 alleging that the bank had wrongly demanded payment of credit card dues from him thereby causing him mental harassment as well as the said demand lowered his image and prestige in the eyes of others including his family members. The present complaint was filed on 4.2.2003. The civil suit filed by the complainant (respondent herein) has been decreed by the Civil Judge whereby a sum of Rs.2,50,000/- with costs besides future interest @ 8% per annum was awarded to the complainant. The said amount admittedly has been paid by the petitioner bank in full and final settlement of the decretal amount.

5. Mr. Sanjay Gupta, learned counsel for the petitioner has submitted that perusal of letters/correspondences addressed by the bank to the complainant would only indicate that demand was made bonafidely and the ingredients of Section 499 IPC which defines 'defamation' are not made out as per averments contained in the complaint. He further argued that the letters were written by the bank bonafidely. The criminal intention i.e. malice on the part of the petitioner bank to harm the reputation of the complainant which is pre-requisite of Section 499 IPC is missing in the complaint. Bank had no intention to harm the reputation of the complainant when it corresponded with him with a view to get cleared the due amount of Credit Card as per their own records. He has further submitted that the conduct of the petitioner bank falls in the 9th exception of Section 499 IPC and, therefore, the Magistrate without appreciating the facts and circumstances of the case erroneously took cognizance of the offence and summoned the petitioner for offence punishable under Section 500 IPC. He has prayed that complaint, therefore, be quashed.

6. Mr. Sidharth Yadav, learned counsel for the complainant (respondent No.1 herein) while refuting the submission of the learned counsel for the petitioner has argued that the correspondence of the bank received by the petitioner, especially the credit card statement and the telegram dated 17.9.2002 contain defamatory words and these documents were seen by his family members and also that Mr. Jishant Narang, accused No.4, also talked to the wife of the complainant on telephone and intimated her that the account of the complainant was cleared and there were no dues to be claimed from him and that complainant should ignore any letter which might be received from the petitioner bank in future. He has, therefore, emphasized that defamation within the meaning of Section 499 IPC is made out against the petitioner bank and the court has rightly taken the cognizance of the offence and issued summons for appearance against the bank and other accused persons.

7. For an offence of defamation as defined under Section 499 IPC, three essential ingredients are required to be fulfilled:- (i) Making or publishing any imputation concerning any person; (ii) Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations. (iii) The said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned.

8. Thus, it is clear that intention to cause harm is the most essential sine qua non for an offence under Section 499 IPC. An offence punishable under Section 500 IPC requires blameworthy mind and is not a statutory offence requiring no mens rea.

9. 9th Exception of the Section takes away the imputation made in good faith by a person for protection of his or other's interest or for public good from the purview of defamation as defined in the Section. This exception relates to private communication which a person makes in good faith for the protection of his own interest. This exception covers not only such allegations of facts as can be proved true but also expression of opinions and personal inferences.

10. 9th exception has been incorporated to protect the interests of the parties in their business transaction which are generally done bonafidely and, therefore, the rule of public good on which this principle is based is, that honest transaction of business and social intercourse would otherwise be deprived of the protection which they should enjoy.

11. Whether any imputation made is with a motive or malafide intention to lower the reputation or is made in good faith is to be determined from the facts and circumstances of the case. Undisputedly, the requirement of good faith and public good, both, are to be satisfied and the failure to prove good faith would exclude the application of 9th exception in favour of the accused even if the requirement of public good is satisfied. The words 'good faith' as appearing in exception 9th not only require logical infallibility but also due care and attention.

12. The court has to consider as to how far erroneous actions or statements are to be imputed for want of due care and caution in a case in reference to the general circumstances, the capacity and intelligence of the person whose conduct is in question. It is difficult to lay down any hard and fast rule for deciding whether an accused acted in good faith within the meaning of 9th exception, as it is an issue to be considered on the facts and circumstances of each case, nature of imputation made, the circumstances under which it was made, the status of the person who made it, and if there was a malice in his mind when he made such imputation, whether he made any inquiry before any such imputation was made and if there were reasons to accept his story, that he acted with due care and attention and was satisfied that imputation was true.

13. In 'Harbhajan Singh v. State of Punjab, (1965) 2 SCR 235', Exception 9 of Section 499 IPC has been interpreted in para 20 and 21 as follows:- '20. Another aspect

of this requirement has been pithily expressed by the Bombay High Court in the case of Emperor v. Abdool Wadood Ahmed. 'Good faith,' it was observed 'requires not indeed logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question'. 'it is only to be expected', says the judgment, 'that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment.' 21. Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case ' what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true' These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception''''''.'

14. Telegram dated 17.9.2002 received by the complainant at his house and allegedly read by his family members i.e. his wife reads as below:- 'CARD NO.5404 6112 0055 5006 TOTAL AMOUNT OUTSTANDING IS RS.362373.01 AAA DESPITE AMPTEEN EFFORTS TO CONTACT YOU AT YOUR OFFICE AS WELL AS RESIDENCE NUMBER AAA WE HAVE NOT HEARD FROM YOU SO FAR AAA YOUR CARD ACCOUNT IS IN A SERIOUS STAGE OR DELIQUENCY AND ANY FUTHER DELAY ON YOUR PART TO ADDRESS THE MATTER MAY PROOF COSTLY IN TERMS OF MONEY AS WELL AS LITIGATION/BOTH CIVIL AND CRIMINAL/IN YOUR NAME CALL BANK RIGHT AWAY AT 3705254.'

15. According to the complainant the imputation on his character in this telegram were ' and any further delay on your part to address the matter may prove costly in terms of money as well as litigation/both civil and criminal/in your name'. This telegram in no manner can be considered as defamatory in nature. This telegram only expressed the concern of the bank/petitioner to get the dues of the credit card cleared well in time and in case there was default, it would invite criminal as well as civil liability.

16. Mens Rea; a mandatory pre-requisite of an offence of defamation is clearly missing in the said communication. This communication made bonafidely by the petitioner bank upon the subject matter contained therein, in which the petitioner had an interest or it had the duty to correspond with the complainant asking him to clear the dues under the circumstances would be privileged and would attract exception 9th. Petitioner bank had no reason to lower the dignity and character of the complainant in the eyes of anyone. The bank was not reckless in sending this telegram to the complainant. The

complainant upon responding to the correspondence though denied his liability to pay the amount having no concern with the card in question as he never held the said card in his name. Action of the bank was in good faith as also in public good as the entire process of correspondence with the complainant was with a view to protect the public money safely invested with the bank and found due from the complainant (as per the bank's record) was repaid.

17. Besides, requirement of publishing any imputation concerning the complainant is also missing in this case. This telegram was sent to the complainant only. The alleged information by accused No.4 to the wife of the complainant cannot in any manner be considered as defamatory. The intimation communicated to the wife of the complainant was that there were no dues left to be claimed in the account of the complainant and in case any communication was received from the bank in future, the same should be ignored.

18. This information in no manner lowered the dignity of the complainant in the eyes of his wife. This intimation was bonafidely made with a view to save the complainant from future harassment at the hands of the petitioner and other accused persons. The wife of the complainant on receipt of the information on telephone from accused No.4 of her own motion made inquiries from friends of the complainant about the alleged account without any realm or reason and, therefore, such inquiries made by her from the friends of the complainant do not invite the provisions of Section 499/500 IPC.

19. The Civil Court in a suit for mandatory injunction and for damages decreed the suit of the complainant awarding damages to him against the bank. The observations of the Civil Court in the said suit that the persistent acts of the bank without any ground was defamatory in nature and harmed the reputation of the complainant might be relevant, however, they are not conclusive and binding on the Magistrate to be followed and accepted. The reason being the Civil Court has to appreciate the evidence of the plaintiff in a suit for damages based on defamation with a different yardstick and is not required to assess the evidence with a view to find out if any criminality was involved. In other words, the Civil Court is not concerned whether such acts of defamation were malafidely done with an intention to lower and harm the reputation of the plaintiff in the eyes of his family members and others. For inviting the provisions contained in Section 499/500 IPC which are penal in nature, a Magistrate has to consider if the requirement of mens rea which is a mandate for a criminal defamation punishable under Section 500 IPC was fulfilled. If mens rea or criminal intention is lacking or is missing in the act of the accused, he cannot be held guilty for an offence of defamation within the meaning of Section 499 IPC. In this case the image or reputation of the complainant was not tarnished in any manner by the petitioner bank. None of the correspondence were ever published or sent to any other person other than the complainant himself. Besides, none of these correspondence indicate that the bank used such language in the letters sent to the complaint which could be termed as defamatory, especially the telegram dated 17.9.2002 or the telephone call received by his wife. Therefore, prima facie, the complaint did not disclose any offence of defamation made out against the petitioner bank.

20. Undisputedly, the petitioner is a bank incorporated in England with limited liability by Royal Charter, 1853 and, therefore, is a corporation/company. A company cannot be in any case held to have committed an offence under Section 500 IPC because, most essential ingredient of the said offence i.e. 'mens rea' would be missing as a company is a juristic entity or an artificial person, whereas a Director is not a company. The company may be made liable for offences, however, if there is anything in the definition or context of a particular Section of a particular statute which would prevent the application of the said section to a limited company, the limited company cannot be proceeded against. There are number of provisions of law in which it would be physically impossible by a limited company to commit the offence. A limited company, therefore, cannot generally be tried for offences where mens rea is essential. Similarly, a company cannot face the punishment of imprisonment for obvious reasons that company cannot be sent to prison by way of a sentence.

21. Under these circumstances, petitioner being a company cannot be held to have committed an offence under Section 500 IPC.

22. Under the circumstances of the case, the trial court did not appreciate the contents of the complaint and the material placed on record by the complainant along with complaint in the right perspective while taking cognizance of offence under Section 500 IPC and consequent summoning of the petitioner bank.

23. Hence, petition is allowed. Complaint No.144/1/2003 and the impugned order dated 20.12.2006 passed therein are hereby quashed qua the petitioner/bank only. The trial court is within its rights to proceed against the other accused persons as per the provisions of law. Attested copy of the order be sent to the trial court.

Sd./-
ARUNA SURESH,J

February 06, 2009