

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2018

DELIVERED ON: 10.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.8136 of 2016

and

M.P.Nos.4249 of 2016 and 3479 of 2017

1. Rangaraj Pande,
Chief News Editor,
Thanthi TV, No.86, E.V.K.Sampath Road,
Vepery, Chennai 600 007.
2. The Managing Director,
Thanthi TV. No.86, E.V.K.Sampath Road,
Vepery, Chennai 600 007. ... Petitioners

Vs.

Kumaravel Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.69 of 2016 on the file of the Judicial Magistrate No.1, Tiruppur and quash the same.

For Petitioners: Mr.B.Kumar, Senior Counsel
for Mr.V.Sanjeevi

For Respondent: Mr. K. Sudhakar

ORDER

The petitioners are accused in C.C.No.69 of 2016 on the file of the Judicial Magistrate No.1, Tiruppur.

2. The respondent/complainant had filed a private compliant under Section 200 of the Code of Criminal Procedure against the petitioners for the alleged offences punishable under Sections 499 and 500 of the Indian Penal Code. The learned Judicial Magistrate No.1, Tiruppur, after recording the evidence of the respondent/complainant, took cognizance of the offences punishable under Sections 499 and 500 of the Indian

Penal Code and issued summons to the accused. The allegations in the private complaint in C.C.No.69 of 2016 on the file of the Judicial Magistrate No.1, Tiruppur are as follows. The respondent/complainant is a follower of Periyar. On 28.03.2015 and 29.03.2015, the President of Dravidar Kazhagam Mr.K.Veeramani was interviewed by Mr.Rangaraj Pande, the first petitioner in a programme named "Kelvikkenna Padil" (what is the answer for the question) telecast on Thanthi T.V. One of the questions posed to Mr.K.Veeramani was "why did you profess that between a snake and a Brahmin attack the Brahmin first" for which Mr.K.Veeramani replied that it is a false propaganda and if it is proved that Periyar had stated so, he would resign his post as President in his party viz., Dravidar Kazhagam. The first petitioner Mr.Rangaraj Pande, showed a slide from a book titled "Hindutva Padaiyeduppu", [the invasion by Hindutva] which showed that Periyar had stated thus. Neither the author of the book nor the publisher of the book was revealed by the first petitioner. More over, a few days later, there was another telecast titled "the clarification by Dravida Kazhagam", which in fact was not a clarification but a set of questions, for which no explanation has been given till date by the petitioners. According to the complainant, Periyar was a revolutionary leader, who tirelessly worked towards equality in the society and has won recognition all over the world and earned many awards for his contribution to the society, especially in the emancipation of the downtrodden and oppressed sections of the society, including women. Both the petitioners were sought to explain as to why legal action should not be initiated against them for their above act and were asked to apologise in public to which effect a legal notice dated 15.07.2015 was sent and a reply dated 27.07.2015 was received. Another rejoinder was sent to them, replying to the false explanation given in their reply notice, which again was replied by the petitioners containing false statements. According to the complainant, both the petitioners intended to bring disrepute to the great leader Periyar, thereby inviting the provisions of Sections 499 and 500 of the Indian Penal Code for defamation.

3. The petitioners on their behalf have categorically denied the allegation that there was ill-will or malice and the complainant not being an "aggrieved person" within the meaning of Section 499 of the Indian Penal Code, has no locus-standi to file the complaint and also that nowhere in the question posed to the guest Mr.K.Veeramani there was any mention about the leader Periyar. In such circumstances, taking cognizance of the complaint is erroneous, when the complaint itself is a sheer abuse of the judicial process.

4. A perusal of the complaint clearly reveals two important aspects.

i] The question posed by the first petitioner to the President of Dravidar Kazhagam party Mr.K.Veeramani did not mention the name of Periyar.

ii] The complainant also states that he was attracted to the late leader Periyar, due to his policy of "forget God ... think of man".

In a democratic country like ours, where freedom of speech and expression is guaranteed under Article 19 of the Constitution of India and the leader of Dravidar Kazhagam party known for his atheist inclination and anti-superstition ideas had every right to express his views in an interview to the petitioners. It is also clear that all the questions posed to him were pertaining to his and his party's ideologies.

5. Mr. B.Kumar, learned Senior Counsel appearing for Mr.V.Sanjeevi counsel for the petitioners relied on the decisions in S.Khushboo Vs. Kanniammal and another reported in (2010)5 Supreme Court Cases 600, wherein, it has been held thus.

The threshold for placing reasonable restrictions on the "freedom of speech and expression" is indeed a very high one and there should be a presumption in favour of the accused in such cases, It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused.

Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as "decency and morality" among others, we must lay stress on the need to tolerate unpopular views in the sociocultural space. The framers of our Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a precondition for meaningful

governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes.

In the instant case, it was contended that the first petitioner posed certain questions for which, there was no compulsion for the Dravidar Kazhagam leader to answer or react. The Dravidar Kazhagam leader was very much aware that he was being interviewed and that he was mentally prepared for answering the questions in a befitting manner. That the petitioners had also telecast the clarifications sent in by Mr.K.Veeramani regarding the contents of the interview also goes to show that there was neither illwill nor any motive on the part of the petitioners to tarnish the image of any leader or party more so, the late leader Periyar. The Apex Court in the decision in S.Rangarajan V. P.Jagjivan Ram reported in 1989(2) SCC 574, held thus.

Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

The different views are allowed to be expressed by proponents and opponents not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue."

It is also pertinent to mention at this juncture that the first petitioner had never expressed his personal opinion or views and was only a person who presented a set of questions, more based on the various replies given by Mr.K.Veeramani. It was also not a discussion forum, where different views were expressed by the participants.

6. The another contention of the learned counsel appearing for the petitioners is that the complainant not being an aggrieved person, within the meaning of Section 499 of the Indian Penal Code, cannot maintain a private complaint under Section 200 of the Code of Criminal Procedure against the petitioners for the alleged offences punishable under Sections

499 and 500 of the Indian Penal Code. At this juncture, it is relevant to extract Section 499 of the Indian Penal Code, which reads as under.

Defamation.- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Reliance was also made by the learned counsel for the petitioners on the decision in M.P.Narayana Pillai and others V. M.P.Chacko and another reported in 1986 Cr1.L.J.2002, wherein it has been held that there is not only the restriction but also prohibition against the courts from taking cognizance otherwise than by a complaint by a person who is "aggrieved" by the offence.

7. It can easily be comprehended that the complainant is not the aggrieved person and that there was no mention of the late leader Periyar in the question posed by the first petitioner. Interestingly, in the legal notice dated 11.7.2015,

the question posed by the first petitioner was presented as if it contained the word referring to the late leader Periyar, but in the complaint, it is not mentioned so. Thus, it can be found that the complainant in his legal notice has initially twisted the facts and included the word Periyar in the question itself, which is unethical.

8. The entire programme, which was telecast on 28.03.2015 in Thanthi T.V. lasting 53.49 minutes was watched by me on line, in order to find out the veracity of the contents of the complaint. It is easily seen that the President of the Dravidar Khazgam party Mr.K.Veeramani was clear in his views about the ideology of his party Dravidar Kazhagam. The topics were mostly against Hinduism and existence of God and also on the women freedom. He neither showed any anger nor reacted to the three slides shown by the first petitioner for the question referred to by the complainant. Out of the three slides, two of them sourced from "Viduthalai", the official Newspaper of Dravidar Kazhagam, pertain to the views of the late leader Periyar on Brahmin community and the third slide is the one, which is the subject matter of this complaint. The first two slides were directly against the Brahmin community. In one slide, it is mentioned that eradication of Brahmins is the way to abolish God and the second slide reads that the Brahmins should be driven away out of this world. Mr.K.Veeramani also termed Hinduism as a Brahmin religion. Many of the questions posed by the first petitioner pertained to the statements made by Mr.K.Veeramani against Hinduism, Hindu Gods and Brahmin community. The complainant has chosen a particular slide out of three slides shown during the interview and tried to highlight that particular slide, instead of going into the contents of the entire interview, lasting 53.49 minutes. The first petitioner had questions on different ideologies of Mr.K.Veeramani and his party. Not even once during the interview, the first petitioner has even made any attempt to bring disrepute or damage to the image of late leader Periyar and the act of the complainant clearly appears to be an abuse of process of law by claiming that it was intentional on the part of the petitioners to have posed this particular question and also refer to one particular slide out of three slides. In fact, there were many other slides in the entire interview session. The rejoinder by Mr.K.Veeramani was also telecast a few days after.

9. The Judicial Magistrate No.1, Tiruppur has taken cognizance of the offence under Section 500 of the Indian Penal Code, without caring to ascertain whether the complainant is an aggrieved person and whether the entire contents of the interview was intended to cause harm to the reputation of any individual or persons or party, as claimed by the complainant, especially when the views expressed by Mr.K.Veeramani pertains

to a particular religion, community and beliefs. At this juncture, it is also pertinent to record that the clarification given by Mr.K.Veeramani subsequently was also telecast, thereby strengthening the contentions of the petitioners that they were in no way intending to make any defamatory imputations against any one, much less the late leader Periyar and on the contrary, the process of criminal action initiated by the complainant was intended only to harass the petitioners.

10. Mr.K.Sudhakar, learned counsel appearing for the respondent relied on the following decisions in support of his contentions that the aggrieved person need not necessarily be the complainant and also that statements made in good faith have to be proved with satisfactory evidence, only in the trial.

1] R.Rajagopal @ R.R.Gopal and another V. V.Sathyamoorthy reported in 2002(5) CTC 579.

2] Rahul Gandhi M.P., Vice President, Indian National Congress V. Rajesh Mahadev Kunte and another reported in Crl.W.P.No.4960 of 2014.

3] A.S.Sree Nandhini Vs. R.Uthaman reported in CDJ 2014 MHC 5913.

The above decisions would not apply to the facts of the present case for the following reasons.

a] There was no reference to the late leader Periyar in the question posed by the first petitioner and in fact, it was only Mr.K.Veeramani, who referred to the late leader Periyar,

b] The petitioners have not contended that any questions posed by the petitioner and the slides exhibited were made in "good faith". Therefore, there is no question directing the petitioners to prove their "good faith" before the trial court by adducing evidence.

c] In the instant case, the respondent/ complainant is not an aggrieved person within the meaning of Section 499 of the Indian Penal Code and Section 199 of the Code of Criminal Procedure, whereas in the decision in R.Rajagopal @ R.R.Gopal and another V. Sathyamoorthy reported in 2002(5) CTC 579, the complainant was an elected Member of Legislative Assembly, Minister and Head Quarters Secretary of AIADMK party and also the contents were found to be objectionable and defamatory and were directed against the then Chief Minister Dr.J.Jayalalitha, their leader, directly accusing her by name.

In view of all the reasons stated by me, I hold that the entire criminal proceedings in C.C.No.69 of 2016 on the file of the Judicial Magistrate No.1, Tiruppur is liable to be quashed.

11. In the result, this criminal original petition is allowed and the entire criminal proceedings in C.C.No.69 of 2016 on the file of the Judicial Magistrate No.1, Tiruppur is quashed. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Judicial Magistrate No.1
Tiruppur.

2. The Public Prosecutor,
Madras High Court.

+1cc to Mr.V.Sanjeevi, Advocate Sr.54940
+1cc to Mr.K.Sudhakar, Advocate Sr.55136

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M.P.Nos.4249 of 2016 and 3479 of 2017

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