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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.OP(MD)No.22263 of 2013

and

M.P(MD) .Nos.1 & 2 of 2013

and

CRL.OP(MD)No. 22300 of 2013

and

M.P(MD) .No.1 of 2013

V.P.R Ilamparuthi

...Petitioner/Accused
in both Petitions

Vs.

Public Prosecutor
Tirunelveli

... Respondent/Complainant
in both Petitions

Common Prayer: These Criminal Original Petitions have been filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in Special Case Nos.5 and 7 of 2013 respectively on the file of the learned Sessions Judge, Tirunelveli and to quash the same as illegal.

In both Petitions :

For Petitioner : Mr.N.Satheeshkumar

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

COMMON ORDER

The petitioner has filed these Criminal Original Petitions for quashing the proceedings in Special Case Nos.5 and 7 of 2013 on the file of the learned Sessions Judge, Tirunelveli.

2.The private complaints have been filed by the Public Prosecutor, Tirunelveli. The petitioner herein is a member of a political party known as Dravida Munnetra Kalagam. In the public meeting held on 29.09.2012 and 27.01.2013, the petitioner had made a defamatory statement attacking Ms.J.Jeyalalitha, the then Hon'ble Chief Minister of Tamil Nadu. Since the person defamed happened to be a high dignitary and a constitutional functionary, the respondent herein who was the Public Prosecutor, Tirunelveli had filed the private complaints before the learned Sessions Court, Tirunelveli and the same were taken on file in Special Case Nos.5 and 7 of 2013.



3.To quash the same, these criminal original petitions have been filed principally on the ground that the petitioner has not uttered anything with regard to the public function discharged by the then Hon'ble Chief Minister and that the complaints filed by the Public Prosecutor per se not maintainable.

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4.Shri.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent submitted that in Section 199(2) Cr.P.C, there are two classes of persons referred to. The first class contains the list of high dignitaries. The second class would refer to all public servants. His contention is that the requirement that the offence in question must pertain to the conduct of the person concerned in the discharge of his public function, would apply only in the case of public servants and not in the case of the high dignitaries. He took this Court through the 41st report of the Law Commission of India and also referred to the decision of the Hon'ble Supreme Court reported **in (2016) 7 SCC 221 (Subramanian Swamy Vs. Union of India, Ministry of Law and others)**. He placed emphasis on Paragraph No.144 occurring in the said Judgment.

5.He further submitted that the person defamed in this case not only happened to be a high dignitary, but also a woman. The Hon'ble Supreme Court in the decision reported **in (2015) 1 SCC 192 (Charu Khurana v. Union of India)** had highlighted the importance attached to the dignity of women. In the present cases, the petitioner herein had spoken recklessly and defamed the personal character of the then Chief Minister and that therefore the impugned complaints are maintainable.

6.Though Thiru.K.K.Ramakrishnan, learned Additional Public Prosecutor for the respondent addressed lengthy arguments in this regard and demanding dismissal of these Criminal Original Petitions, this Court is not impressed with the contentions for the simple reason that the issue on hand is no longer *res integra*.

7.The Constitution Bench of the Hon'ble Supreme Court in the decision reported in **CDJ 2018 SC 391 (K.K.Mishra vs. the State of Madhya Pradesh)** had categorically held that Section 199 (2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of the acts/conduct in the discharge of public functions of the concerned functionary or public servant, as the case may be. The learned Additional Public Prosecutor also contended that it would not be open to this Court to see if the defamatory content has nexus with the public function or not. He wanted to this Court to appreciate the limited scope of Section 482 Cr.P.C.



8. When confronted with the aforesaid enunciation of the legal position by the Hon'ble Supreme Court, the learned Additional Public Prosecutor submitted that it would not be open to this Court to analyze and dissect the complaint to see whether the defamatory attack pertained to the discharge of public function or not. According to him, that would fall outside the scope of the power of this Court under Section 482 of Cr.PC. He placed reliance on the decision of the Hon'ble Supreme Court reported in **(2015) 8 SCC 239 (Rajdeep Sardesai vs. State of Andhra Pradesh)**. Particularly paragraph Nos.34 and 40 thereof.

9. This Court is unable to agree. It was authoritatively laid down by the Hon'ble Supreme Court in the decision reported in **1992 Supp (1) SCC 335 (State Of Haryana And Ors vs Ch. Bhajan Lal And Ors)** that the High Court exercising its inherent power under Section 482 of Cr.PC is entitled to go through the entire averments in the complaint. If the Court comes to the conclusion that taking all the averments as a whole, if no offence is made out, the Court would be justified in quashing the prosecution. Therefore, this Court is certainly entitled to go through the defamatory statements said to have been made by the petitioner/accused and see if it has any bearing on the discharge of the public functions of the high dignitary and public servant defamed.

10. The learned counsel appearing for the petitioner pointed out that such an approach was adopted by the Hon'ble Supreme Court in the decision reported in **CDJ 2018 SC 391 (K.K.Mishra vs. the State of Madhya Pradesh)** referred to earlier. Paragraph Nos.7, 10 and 11 of the aforesaid decision are particularly relevant and they read as under :

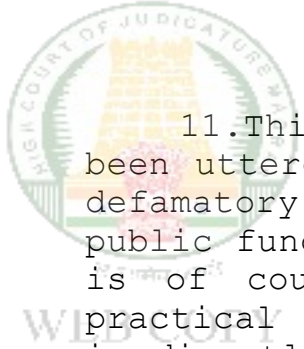
"7. Section 199(2) Cr.P.C provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the concerned functionary or public servant, as may be. The prosecution under Section 199(2) Cr.P.C is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the Competent authority in the State/Central Government under Section 199(4) of the Code. Such a complaint is required to be filed in a Court of Sessions that is alone vested with the jurisdiction to hear and try the alleged offence and even without the case being committed to the said Court by a Subordinate Court. Section 199(2) Cr.P.C read with Section 199(4) Cr.P.C, therefore, envisages a departure



from the normal rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in sub-section (2) of Section 199 Cr.P.C by sub-section(6) thereof.

10.The problem of identification and correlation of the acts referred to in an allegedly defamatory statement and those connected with the discharge of public functions/official duties by the holder of the public office is, by no means, an easy task. The sanction contemplated under Section 199(4) Cr.P.C though in the opposite context i.e to prosecute an offender for offences committed against a public servant may have to be understood by reference to the sanction contemplated by Section 197 Cr.P.C which deals with sanction for prosecution of a public servant. There is fair amount of similarity between the conditions precedent necessary for accord of sanction in both cases though the context may be different, indeed, the opposite. While dealing with requirement of sanction under Section 197 Cr.P.C this Court in *Urmila Devi Vs.Yudhvir Singh* (2013) 15 SCC 624 had taken the following view which may have some relevance to the present case.

11.If the allegedly defamatory statements, already extracted, in respect of which sanction has been accorded to the Public Prosecutor to file the complaint against the appellant under Section 199(2) Cr.P.C by the order dated 24th June, 2014 are to be carefully looked into, according to us, none of the said statements, even if admitted to have been made by the appellant, can be said to have any reasonable connection with the discharge of public duties by or the office of the Hon'ble Chief Minister. The appointment of persons from the area/place to which the wife of the Hon'ble Chief Minister belongs and the making of phone calls by the relatives of the Hon'ble Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon'ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Section 199(2) and 199(4) Cr.P.C will not be available. It is the remedy saved by the provisions of sub-section(6) of Section -199 Cr.P.C i.e a complaint by the Hon'ble Chief Minister before the ordinary Court ie. the Court of Magistrate which would be available and could have been resorted to".



11.This Court went through the defamatory words said to have been uttered by the petitioner/accused. No doubt they are *per se* defamatory. But then, they do not in any way pertain to the public function discharged by the then Hon'ble Chief Minister. It is of course saddening to note the low and vulgar of level practical discourse. The party to which the petitioner belongs is directly opposed to the party headed by the person defamed in this case. Therefore, while attacking political opponent, who happened to be the Chief Minister of the State during the relevant time, reckless and vulgar statements have been employed. But, they do not have a direct bearing on the public function discharged by her. Therefore, this Court is of the view that in a case of this nature, the office of the Public Prosecutor cannot be used. In such cases, the person concerned must avail the remedy set out in law to a person personally aggrieved. The Public Prosecutor cannot institute a private complaint taking cudgels on behalf of the person defamed.

12.In this view of the matter, the impugned proceedings in S.C Nos.5 and 7 of 2013 on the file of the learned Sessions Judge, Tirunelveli are quashed.

13.Accordingly, these Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge, Tirunelveli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
3. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.N.Satheeshkumar,Advocate Sr.No.68737,68738

SKM

VB/PN/SAR1/10.07.2018/5P/7C

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