

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.06.2019

DELIVERED ON: 20.06.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CRL.R.C.No.409 of 2019 & CrI.M.P. No.6417 of 2019

Vaiko

Petitioner

vs.

The City Public Prosecutor
Chennai City

Respondent

Criminal Revision filed under Section 397 Cr.P.C. seeking to set aside the order dated 08.04.2019 passed in CrI.M.P. No.3921 of 2019 in C.C. No.1 of 2007 on the file of the Special Court of Trial for criminal cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.

For petitioner
For respondent

Mr. G. Devadoss
Mrs. P. Kritika Kamal P
Government Advocate (Crl. Side)

ORDER

This criminal revision has been filed seeking to set aside the order dated 08.04.2019 passed in CrI.M.P. No.3921 of 2019 in C.C. No.1 of 2007 on the file of the Special Court of Trial for criminal cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu (for brevity "the Special Court"), Chennai.

2 The facts in brief, leading to the institution of the instant criminal revision are as under:

2.1 In exercise of the powers under Section 199(2) Cr.P.C., the City Public Prosecutor, after obtaining previous sanction from the State Government under Section 199(4) Cr.P.C., filed a complaint in C.C. No. 1 of 2007 before the Sessions Court, Chennai, for the offence under Section 499 read with

Section 500 IPC against Vaiko, the leader of M.D.M.K. for allegedly defaming the then Chief Minister of Tamil Nadu M. Karunanidhi (for brevity "MK").

2.2 After the constitution of the Special Court, the case was transferred for trial to the file of the Special Court from the file of the Sessions Court, Chennai.

2.3 Pre-charge proceedings began in terms of Section 237 Cr.P.C. read with Chapter XIX-B Cr.P.C. "Cases instituted otherwise than on police report" with the examination of five witnesses by the prosecution. After the prosecution closed the pre-charge evidence, the accused filed Crl.M.P.No.3921 of 2019 in C.C. No.1 of 2007 under Section 245 Cr.P.C. for discharging him from the prosecution, which has been dismissed by the Special Court on 08.04.2019, assailing the legality and validity of which, the accused is before this Court.

3 Heard Mr. G. Devadoss, learned counsel for the accused and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent-State.

4 The Trial Court has dismissed the discharge application preferred by the accused by holding that there are prima facie materials to frame a charge under Section 499 IPC read with Section 500 IPC against the accused, which reasoning is under attack in this revision.

5 To appreciate the rival contentions, it may be apposite to extract the impugned defamatory words alleged to have been spoken by the accused as published in the 25.12.2006 edition of the New Indian Express:

"The State Government is gearing up the police force to prevent MDMK party cadres from coming to the party office. It is also planning to disrupt the meeting on Monday.

Meanwhile, Vaiko said he had convened a meeting of high level committees on Monday at the party headquarters in Chennai and alleged that Chief Minister Karunanidhi had hatched a plan to let loose hooliganism in connivance with the police to disrupt the party meeting.

Vaiko also alleged that the State Government was fully gearing up the police force to prevent MDMK party cadres from coming to the party office."

6 A careful reading of the whole news item shows that the M.D.M.K. contested Parliamentary elections as part of the U.P.A. and won a few M.P. seats; the party wanted the then Prime Minister Dr. Manmohan Singh to drop their two M.Ps., viz., L. Ganesan and Gingee Ramachandran from the Cabinet, whereas, those two Ministers were reluctant to resign from the Cabinet, for which, Vaiko, the petitioner herein, who is the General Secretary of the M.D.M.K. addressed a letter to Dr. Manmohan Singh and Sonia Gandhi, the Chairperson of the U.P.A., wherein, he has made the alleged insinuations extracted in para 5 above.

7 The learned counsel for the accused contended that a Press report cannot be treated as a substantive evidence. In support of the said contention, he placed reliance on the judgment of the Supreme Court in Laxmi Raj Shetty and another vs. State of Tamil Nadu [(1988) 3 SCC 319]. He further contended that the prosecution has not examined the Reporter who had covered the Press Meet. The learned counsel placed further reliance on the following judgments in support of his arguments:

- i. Century Spinning and Manufacturing Co. Ltd. & Others vs. State of Maharashtra [(1972) 3 SCC 282]
- ii. L. Elayaperumal vs. J. Jayalalitha, Chief Minister of Tamil Nadu, Madras [1993 MLJ (Crl.) 289]
- iii. Quamarul Islam vs. S.K. Kanta and others [1994 Supp. (3) SCC 5]
- iv. S.P. Shenbagamoorthy vs. Dr. Chenna Reddy, Governor, State of Tamil Nadu [1994 (2) MWN (Crl.) 121]
- v. Prof. K. Anbazhagan, General Secretary, DMK vs. State of Tamil Nadu and 2 others [1996 (1) CTC 33]
- vi. Ajoy Kumar Ghose vs. State of Jharkhand and another [(2009) 14 SCC 115]

8 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions and submitted that the prosecution has examined Santhosh (P.W.4), Chief Reporter, Indian Express and Jhun Jhun Wala (P.W.5), Publisher, Indian Express and the said daily itself has been marked as Ex.P.1.

9 This Court gave its anxious consideration to the rival submissions.

10 From the evidence of the five witnesses who have deposed before the Trial Court, this Court cannot conclude that no case against the accused has been made out, which, if

unrebutted, would not end in his conviction. The case of the prosecution is that the accused has sent a communication containing the aforesaid defamatory insinuations to Dr. Manmohan Singh and Sonia Gandhi and a copy of the same was released to the Press. The accused has alleged that the Chief Minister is using the official machinery at his command to disrupt the M.D.M.K. party meeting. As laid down in Section 246 Cr.P.C., when there are grounds for presuming that the accused has committed an offence, he cannot be discharged from the prosecution.

11 With regard to the non-examination of the Reporter who covered the Press meet, the same cannot be urged in pre-charge proceedings, because, law gives an opportunity to the prosecution to examine a witness even after the charges are framed. Therefore, the prosecution case cannot be quashed at the threshold on this ground.

12 As regards the contention of the learned counsel for the accused that an article published in a daily is only a hearsay evidence, as stated above, in the instant case, the allegation is in a letter that was faxed by the accused to Dr. Manmohan Singh and Sonia Gandhi which contains the impugned defamatory insinuations.

13 Thus, as rightly held by the Trial Court, when there are prima facie materials for presuming that the accused has committed an offence, he cannot be discharged from the prosecution.

In the result, this criminal revision fails and is accordingly dismissed. Connected CrI.M.P. is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Cad

To

- 1 The City Public Prosecutor
Chennai City
- 2 The Special Judge,
Special Court of Trial for criminal cases related to elected
M.Ps. and M.L.As. of Tamil Nadu, Chennai.

WEB COPY

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

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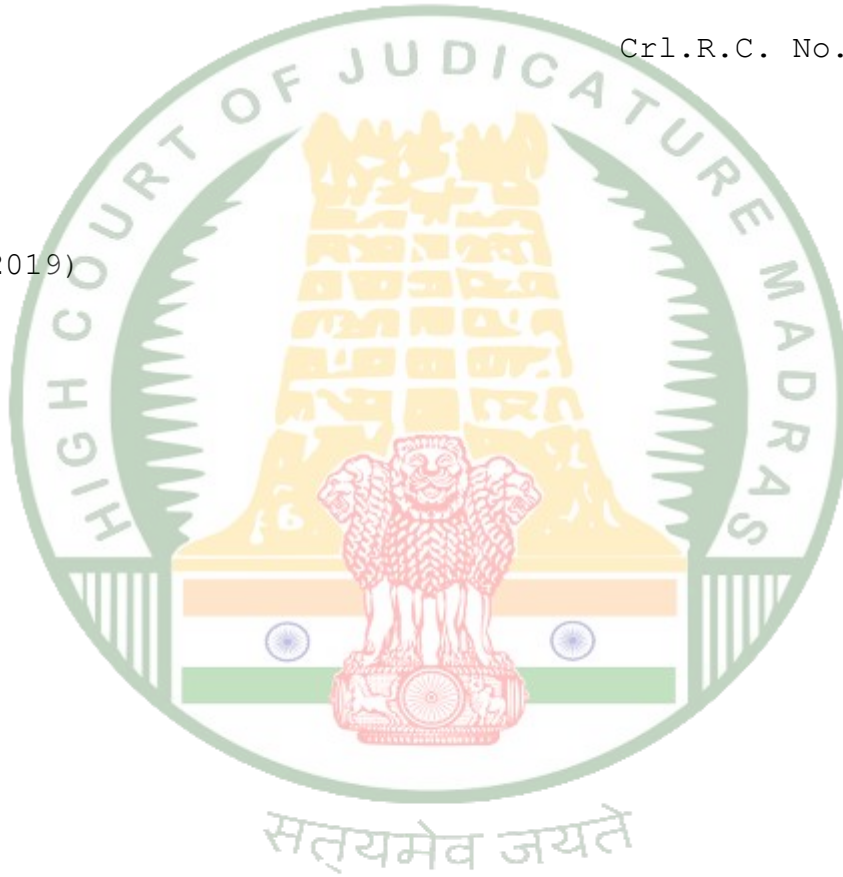
The Section Officer (Crl. Side)
Madras High Court
Chennai 600 104

+1cc to Mr.G.Devadan, Advocate, S.R.No. 50378

Crl.R.C. No.409 of 2019

SSM(CO)

GN(18/07/2019)



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