

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.20021 of 2013

- 1.Thiru Cyrus Broacha
Performer and Script Writer,
"CNN-IBN TV Channel".
- 2.Thiru Asis Shakya
Script Writer,
"CNN-IBN TV Channel".
- 3.Thiru Kunal Vijayakar
Director of CNN-IBN TV Channel. ... Petitioners

Vs.

The City Public Prosecutor,
High Court Campus,
Chennai 600 104. Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records pertaining to the proceedings in C.C.No.26 of 2013 on the file of Principal Session's Court, Chennai.

For Petitioners: Mr.B.Chandrasekaran

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking to call for the records pertaining to the proceedings in C.C.No.26 of 2013 on the file of the learned Principal Session Judge, Chennai.

2.The case of the petitioners is that the petitioners are arrayed as accused in C.C.No.26 of 2013 on the file of the learned Principal Session Judge, Chennai, for the alleged offence of defamation under Section 499 Cr.P.C. The learned

Principal Session Judge, Chennai, has taken cognizance of the complaint in a routine manner and aggrieved by the same, this petition has been filed.

3.The first petitioner is a renowned humorist, beginning his career in professional comedy during the year 1992 on the radio and progressing to television where he gained nationwide recognition for his candid camera show MTV Bakra. In a career spanning two decades, he has authored two books, served as a humor columnist for leading publications including Mid-Day and the Hindustan Times, performed his comedy in the presence of leading luminaries and most notably has become a prominent television personality, famous for his humour, wit and political satire.

4.The second petitioner is a renowned standup comedian and has performed numerous shows all over the country. He is also a columnist with the Hindustan Times.

5.The third petitioner has been on television since 1999 and has acted in sit-coms and movies. He is a food critic on Times Now on a widely watched show called "The Foodie". He has also been a humor columnist with the Times of India, The Week Magazine and a food columnist with the Asian Age, Mahanagar and the Times of India.

6.The instant complaint relates to a broadcast dated 02.04.2013 of 'The Week That Wasn't', a weekly featured programme on CNN-IBN that has been hosted by the first petitioner. The format of the show is essentially that of a political satire, portraying events having taken place over the past week in a humorous light, often accompanied by spoofs of the people involved. It is purely an entertainment program and can, in no way, be understood as news or serious political commentary. No public figure portrayed on the show is ever represented under their true name. Every broadcast begins with an explicit disclaimer stating, in no uncertain terms, that the show is for entertainment purposes only and advises viewers to view it purely in that spirit.

7.According to the petitioners, since high profile nature of the parties were involved, sanction was accorded to the City Public Prosecutor in terms of Section 199 (4) of Cr.P.C. for filing prosecution against the petitioners under Section 499 of IPC. Subsequently, the respondent lodged a complaint against the petitioners under Section 199(2) of Cr.P.C. for the offence punishable under Section 500 of I.P.C. Hence, this petition.

8.The learned counsel appearing for the petitioners would submit that the issue involved is no longer res integra and it

is settled by the Hon'ble Apex Court as well as by this Court. Accordingly, he prayed for appropriate orders.

9.The learned Additional Public Prosecutor vehemently opposed for allowing this petition and would submit that the statement made in the said show displayed by the petitioners is objectionable one and was defaming the former Chief Minister, thereby the complaint was lodged. Hence, this Court need not interfere with the complaint lodged by the respondent. Accordingly, he prayed for dismissal of the criminal original petition.

10.Heard the arguments advanced on either side and perused the materials placed on record.

11.Admittedly, prosecution was initiated by the State by according sanction to the City Public Prosecutor in terms of Section 199 (4) of Cr.P.C. Accordingly, the complaint was lodged by the respondent before the learned Principal Session Judge, Chennai and the learned Principal Session Judge, Chennai, has taken cognizance of the complaint. Hence, the petitioners are before this Court.

12.The issue involved is no longer res integra and the same was literally considered by this Court in the decision reported in 2018 (4) MLJ (Criminal) 578 (Karur Murali and others Vs. Public Prosecutor, Tirunelveli and another), the relevant portion of which reads as follows:

"3.The issues, which arise for consideration in these petitions are as follows:

(A) Whether a criminal complaint filed by the Public Prosecutor on behalf of the Hon'ble Chief Minister under Section 199(2) of CrPC can be continued even after the person concerned ceases to hold the post at a later point of time?

(B)Whether the Public Prosecutor can continue to prosecute a criminal Complaint even after the death of the erstwhile Hon'ble Chief Minister without any person impleading himself or herself as the legal heir of the deceased Hon'ble Chief Minister, in order to continue the proceedings.?

(C)Whether the allegations made in the complaint against the erstwhile Hon'ble Chief Minister pertains to and is connected with the discharge of public

function / official duty or the allegations are personal in nature and thereby Public prosecutor could not have maintained the criminal prosecution instituted under Section 199(2) of CrPC alleging commission of offence under Section 499 of 500 of IPC?

4. For the purpose of answering the first issue, it is important to extract the provision under Section 199(2) of CrPC, which is as follows:

"199. Prosecution for defamation:

(1)

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor."

6. It will be relevant to extract the judgment of the Hon'ble Supreme Court of India, in K.K. Mishra Vs. The State of Madhya Pradesh & Another, reported in CDJ 2018 SC 391 with regard to the intention behind providing the special privilege under Section 199(2) of CrPC, 1973 which is as follows:

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.

8. The rationale for the departure from the normal rule has been elaborately dealt with by this Court in a judgment of considerable vintage in P.C. Joshi and another vs. The State of Uttar Pradesh 1 [paragraph 9]. The core reason which this Court held to be the rationale for the special procedure engrafted by Section 199(2) Cr.P.C. is that the offence of defamation committed against the functionaries mentioned therein is really an offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special procedure. P.C. Joshi (supra), however, specifically dealt with the provisions of Section 198B of the Code of

Criminal Procedure, 1898 ("old Code") which are pari materia with the provisions of Section 199 of the Cr.P.C. ("new Code").

11.It will be useful to refer to the judgment of the Kerala High Court in KM.Hasan Vs. Hanisabi, made in C.R.P. No.927 of 2001, dated 2010.2008 and the relevant portions of the judgment are extracted hereunder:

1.The question raised in this revision is whether the restriction contained in Section 199 of the Code of Criminal Procedure (for short, "the Code") on the right of a person to prefer a complaint is applicable to the person who came forward to continue the proceedings on the death of the original complainant. Learned counsel for the revision petitioners contended that the person willing to continue the proceedings after the death of the original complainant should himself be a 'person aggrieved' while according to the learned counsel for respondent, the ban under Section 199 of the Code is applicable only in the matter of taking cognisance.3. Section 199 of the Code uses the words "some person aggrieved". So far as the words "some person aggrieved" are concerned, there cannot be inflexible rule that those words limit the right to make a complaint for the offence of defamation to the person actually defamed. The words in Sec.199 (1) of the Code cannot be understood as having the narrow meaning that none other than the person defamed could prefer a complaint. Whether a person is aggrieved by the imputations depends on the facts and circumstances of each case. For instance, if an imputation of immorality is attributed to a girl, the reputation of her father would also be at stake and hence, the father of the girl concerned can also be said to be a "person aggrieved". The object of

incorporating the words "some person aggrieved" is only to limit the right to file complaint for the offence of defamation to the person who suffered the injury.

4. The question for consideration and decision is whether such restriction is applicable to a person who comes forward willing to continue the proceedings on the death of the complainant at whose instance cognizance of the offence has been taken. The Chief Court of Punjab and Lahore in *Ishar Das v. Emperor* (1908 (7) Crl. L.J. 290, held that the maxim "actio personalis moritur cum persona (i.e. a personal right of action dies with the person) is applicable in the matter of prosecution for defamation since that is essentially a personal action and institution of the proceedings depended on the temperament of the person defamed. Dissenting from that view Mosely, J., in *U. Tin Maung v. The King* (AIR 1941 Rangoon 202) held that the words "some person aggrieved" occurring in Sec.198 of the Code (as it then stood) only limited the court's power of initial cognizance. Once the court has seizin of the case, there is nothing to prevent the court from proceeding with it. A learned Single Judge of Madhya Pradesh High Court followed that view in *Nathu Jeorakhan v. Sheopal Kuppa* (AIR 1963 MP 47). The Apex Court considered the issue though in relation to the offences punishable under Sections 493 and 496 of the Penal Code in *Ashwin v. State of Maharashtra* (AIR 1967 SC 983) and held that the bar under Sect.198 of the Code is removed when the aggrieved person files a complaint, and that his presence throughout trial is not necessary. Though the court cannot substitute a new complainant in the place of a deceased complainant, it has the power to authorise the conduct of the prosecution by any person. A learned Single Judge of

the Allahabad High Court in Abdul Hakim v. State (1973 CrL.L.J.492) took the view that a proper and fit person could be permitted to continue the proceedings on the death of complainant in a prosecution for the offence of defamation.

9.The maxim, "actio personalis moritur cum persona" does not apply to criminal proceedings for the offence of defamation. Revision Petition is dismissed Criminal Miscellaneous Petition No.4396 of 2001 shall stand dismissed.""

13.In view of the above, this Court is of the view that the allegations made in the complaint is purely personal in nature and is not the one pertaining to the public function of the former Chief Minister.

14.Further, the allegation found in the complaint is not serious one and not relating to the discharge of her public function. The program itself is a comedy program and there is no defamatory statement made against the former Chief Minister. The former Chief Minister is also not alive and no purpose would be served if prosecution is continued against the petitioners. In view of the above, I do not think anything survives for further adjudication.

15.This criminal original petition is accordingly allowed and the proceedings in C.C.No.26 of 2013 on the file of the Principal Sessions Court, Chennai, is hereby quashed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

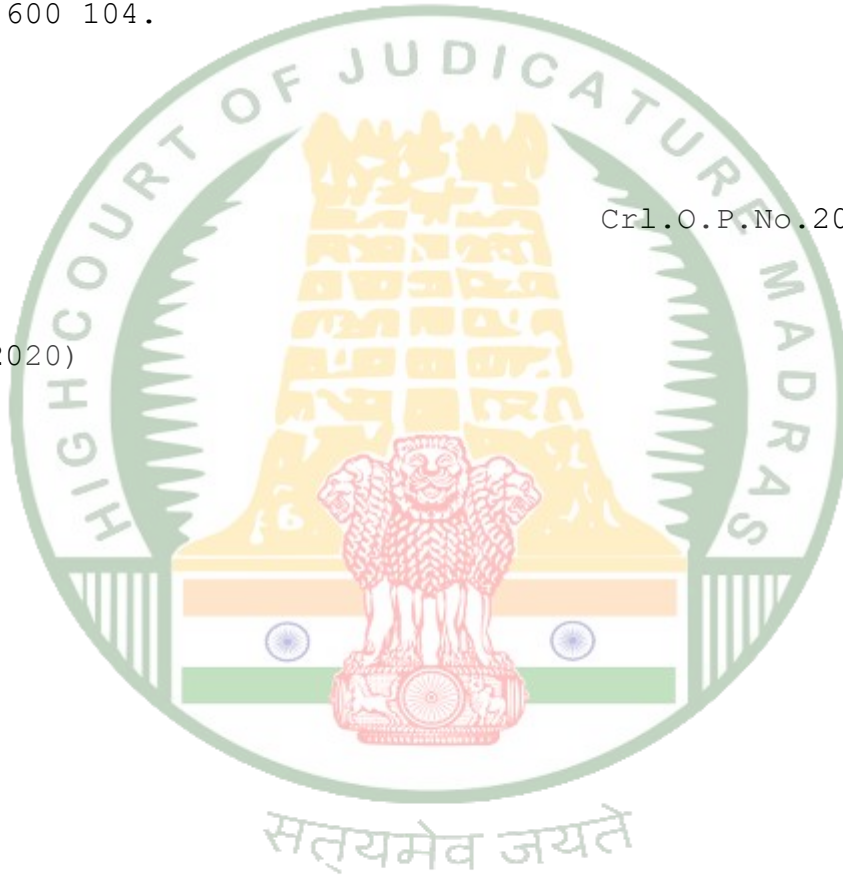
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To

- 1.The Principal Session's Judge
Chennai.
- 2.The City Public Prosecutor,
High Court Campus,
Chennai 600 104.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

Crl.O.P.No.20021 of 2013

KK(CO)
SP(25/02/2020)



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