

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.15400 & 15403 of 2016 &
Crl.M.P.Nos.7597, 7598 & 7603 of 2016

Dr.Subramanian Swamy

...Petitioner
in both petitions

Vs.

1. The City Public Prosecutor,
City Civil Court Buildings,
Chennai 600 104.
2. Thiru Sunil Nair,
Editor "Times of India",
Bennett Coleman & Co. Ltd.,
No.140, Old Mahabalipuram Road,
Cehmmanchery, Chennai - 600 119.
3. Thiru S.Santhanagopal,
Publisher & Printer, "Times of India",
Bennett Coleman & Co. Ltd.,
No.140, Old Mahabalipuram Road,
Cehmmanchery, Chennai - 600 119.
[Respondents 2 & 3 given up]

...Respondents
in Crl.O.P.No.15400 of 2016

1. The City Public Prosecutor,
City Civil Court Buildings,
Chennai 600 104.
2. Dr.R.Krishnamurthy
Editor & Promter, Dinamalar (RF)
New Standard Press, T.V.R. House,
Medavakkam, Chennai - 600 100.
3. Dr.R.Lakshmipathy,
Publisher, Dinamalar (RF)
New Standard Press, T.V.R. House,
Medavakkam, Chennai - 600 100.
[Respondents 2 & 3 given up]

...Respondents
in Crl.O.P.No.15403 of 2016

Prayer: Petitions filed under Section 482 Cr.P.C, praying to call for the records and quash the criminal defamation case filed by the respondent in C.C.Nos. 39 and 40 of 2014 on the file of the Principal District and Sessions Judge, Chennai.

For petitioner : Mr.V.Ravi Ramaswamy
in both petitions
For respondents : Mr.Charles Prem Kumar
G.A.(Crl.side) - R1
in both petitions

C O M M O N O R D E R

These petitions have been filed to quash the complaints made against the petitioner, which have been taken on file by the learned Principal Sessions Judge, Chennai in C.C.Nos.39 and 40 of 2014.

2. The Sessions Judge, Chennai has taken on file the complaint filed by the Public Prosecutor as against the petitioner in C.C.No. 39 of 2014 for making the following imputations :

“மீனவர் பிரச்சனை பின்னணியில் பிரபலங்கள் .”

and in C.C.No.I40 of 2014 for making the following imputations :
"Swamy hits back, says boats owned by Baalu, Sasikala"

3. It is the contention of the learned counsel appearing for the petitioner that the alleged statement noway amounts to defamation as against the then Chief minister affecting the public function. At the most, it amounts only a criticism for which the petitioner cannot be prosecuted under Section 500 of I.P.C. Further, it is also stated that G.O.Ms.Nos.802 and 803, dated 05.09.2014 issued by the Public (Law and Order -H) department according sanction to prosecute the petitioner itself have been quashed by this Court in a batch of writ petitions in W.P.Nos.25562 and 25563 of 2014, dated 04.02.2020. Therefore, the proceedings in C.C.Nos. 39 and 40 of 2014 pending on the file of the Principal Sessions Judge, Chennai are liable to be quashed.

4. Even otherwise, the so called imputation is just like a criticism. The imputation alleged to have been made by the petitioner in my considered view is a criticism and at no stretch of imagination, amounts to defamation against the then Chief Minister in discharge of her official function and they are only personal in nature.

5. To take cognizance of the complaint under Section 199(2) of Cr.P.C., the so called defamation should be directly attributed to a person in discharge of his/her public functions and only in such circumstances, Sub Section 2 of Section 199 of Code of Criminal Procedure will stand attracted. If the said imputation apparently made against the public functionaries, in discharge of his/her public function, have no reasonable nexus with the discharge of public duties, the remedy available is under Section 199(6) of Cr.P.C. before the Magistrate by making private complaint and not under Section 199(2) and 199(4) of Cr.P.C. In other words, any criticism or defamation in the nature of personal capacity, such defamation have no nexus with discharge of his/her official function of the State, complaint cannot be made by a Public Prosecutor merely on the basis of Government Order.

6. The entire statement appears to be only criticism not even causing aspersions or imputation personally. In such view of the fact, the prosecution is nothing but abuse of process of law. Further, the Government Order on the basis of which the complaint has been launched has already been quashed by this Court in writ petitions in W.P.Nos.25562 and 25563 of 2014, dated 04.02.2020.

7. In view of the foregoing reasons, the complaint in C.C.Nos. 39 and 40 of 2014 on the file of the Principal Sessions Judge, Chennai are quashed and the Criminal Original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Principal District & Sessions Judge, Chennai.

2. The City Public Prosecutor,
City Civil Court Buildings,
Chennai 600 104.

Copy to

Government Advocate, Criminal Side.

+1cc to Mr.R.Ravi, Advocate, S.R.No.40256

Cr1.O.P.Nos.15400 & 15403 of 2016

UM(CO)

KKV/08/01/2021