

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.15401, 15402, 15404 & 15405 of 2016
and Crl.M.P.No.7599, 7601, 7605 and 7607 of 2016

Dr.Subramanian Swamy

...Petitioner in all
Crl.O.Ps.

Vs.

City Public Prosecutor,
City Civil Court Buildings,
Chennai - 600 104.

...Respondent in all
Crl.O.Ps.

Prayer: Petitions filed under Section 482 Cr.P.C, praying to quash all the proceedings in C.C.No.46, 44, 45 of 2014 and C.C.No.27 of 2015 respectively, on the file of the Principal District and Sessions Judge, Chennai.

For Petitioner : Mr.Ravi Ramasamy for
Party-in-Person in all Crl.OPs

For Respondent : Mr.A.Natarajan,
Public Prosecutor, Assisted by
Mr.Md.Muzammil, G.A.(Crl.side)

COMMON ORDER

In all the four cases, complaint has been filed against the very same petitioner by the very same respondent and the issue to be decided in all the four cases are common in nature and hence, all the four cases being disposed of by a common order.

2. All the four petitions have been filed to quash the complaints taken on file by the learned Principal District and Sessions Judge, Chennai. The Principal District and Sessions Judge, Chennai has taken on file, the complaints filed by the Public Prosecutor as against the petitioner in C.C.No.46, 44, 45 of 2014 and C.C.No.27 of 2015 respectively, for making alleged imputation as against the former Chief Minister of Tamil Nadu in the social media. The imputations allegedly made by the petitioner are as follows:

"BJP workers of Nilgiris met me today and gave me a list of properties of JJ/SKN in Kodaganad. Another disprop. assets case on the cards'',

"J.J. Government is clearly terror friendly because the police have sanctioned the holding of a memorial meeting for LTTE's Thillapan in Tamil Nadu"

"Jail for Jayalalitha. her to govern is like giving a garland of flowers to a monkey or asking a donkey to appreciate Kalpura incense aroma''

"J.J. likely any moment to depart for Baltimore, U.S.A. to be admitted in Johns Hopkins Hospital for a liver transplant. Tough operation''

3. It is the contention of the learned counsel appearing for the petitioner that the alleged statements noway amounts to defamation as against the former 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 similar G.Os. issued by the Public (Law and Order -H) department, Government of Tamilnadu according sanction to prosecute the speakers concerned and publishers itself has been quashed by this Court in a batch of writ petitions in W.P.Nos.25377 and 25378 of 2013, etc., dated 21.5.2020. Therefore, the proceedings in C.C.No.46, 44, 45 of 2014 and C.C.No.27 of 2015 taken on the file of the Principal District and Sessions Judge, Chennai, transferred and pending on the file of the Special Court of trial for Criminal cases related to M.Ps. & M.L.As. of Tamilnadu, Chennai are liable to be quashed.

4. The learned Public Prosecutor submitted that whether the statement is one of the defamative imputation caused damage to the public authorities or State is a matter of trial, cannot be decided at this stage in a quash petition. It is further contented that an appeal has been filed against the order passed by this Court quashing the said G.O., in a batch of writ petitions in W.P.No.25377 and 25378 of 2013, etc., dated 21.5.2020.

5. Heard the learned counsel appearing for the petitioner and the Public Prosecutor appearing for the respondent and perused the materials available on record.

6. Already, this Court in a batch of writ petition in W.P.No.25377 and 25378 of 2013, etc., dated 21.5.2020, extensively examined and analyzed the scope of Section 199 (2) Code of Criminal Procedure along with Sec.199 (6), Exceptions

under Section 499, penal provisions under Sec. 500, 501 and 502 of I.P.C., Procedure for prosecuting the criminal defamation offences prescribed under Section 199 of Cr.P.C., the law of Criminal defamation, Role of the Public Prosecutor and his duties and Duties of the Magistrate/ Sessions Judge while taking cognizance of a private complaint, Freedom of expression, etc. Be that as it may.

7. It is also submitted that to constitute an offence under Section 500 of I.P.C., against the constitutional functionaries or the Minister of State, it has to be established by the prosecution that the alleged imputation made in respect of the conduct of a public servant/public functionary in discharge of his/her public functions and the public function stands on a different footing than the private activities of a public servant. If the statement made is mere criticism then it is a right guaranteed under Article 21 of the Constitution of India.

8. It is also to be noted that in a catena of judgments reported in [(2015)8 SCC 239 RAJDEEP SARDESAI VS. STATE OF ANDHRA PRADESH AND OTHERS] and [1993 Supp (1) SCC 499, the Apex Court held that judicial process should not be an instrument of oppression or needless harassment. In PEPSI FOODS LIMITED VS. SPECIAL JUDICIAL MAGISTRATE REPORTED IN (1998) 5 SCC 749, the Hon'ble Supreme Court has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. The so called imputation allegedly made should have reasonable nexus with discharge of public duties. Therefore, mere criticism without any intent on the part of the petitioner and/or without any nexus with discharge of public duties will not come under the purview of offence punishable under Sec.500 of I.P.C.

9. As already stated supra, the similar G.Os. issued by the Public (Law and Order -H) department, Government of Tamilnadu according sanction, to prosecute the speakers concerned and publishers of the daily itself has been quashed by this Court in a batch of writ petitions in W.P.Nos.25377 and 25378 of 2013, etc., dated 21.5.2020.

10. In a judgment reported in (2018)6 SCC 676 [K.K.MISHRA VS. THE STATE OF MADHYA PADESH AND OTHERS the Apex Court held that the alleged statements have no reasonable nexus with the discharge of public duties by or office of the Chief Minister. Such statements may be defamatory but in absence of a nexus between the same and the discharge of public duties or office of the Chief Minister, remedy under section 199(2) and 199(4) Cr.P.C. will not be available. It is the remedy saved by

the provisions of subsection (6) of section 199 Cr.P.C. i.e. a complaint by the Chief minister before the ordinary court i.e. the court of a Magistrate which would be available and could have been resorted to.

11. In ASHWINI KUMAR VS. SUBASH GOYAL reported in MANU/PH/1170/2013 while dealing with a case of Criminal defamation under section 499 IPC quashed the complaint and held as follows:

" The attempt to curb the freedom of speech, the freedom of press and the power of the pen therefore, needs to be discouraged and rather, complaints such as these ordinarily should be viewed as attempts of a prudish mind of the complainant's orchestrator showing complete subversiveness and servility of character, and displaying an aversion to criticism over preference to a parroted existence.(Para 19)."

12. Similarly in KARTAR SINGH VS. STATE OF PUNJAB reported IN A.I.R. 1956 SC 541 wherein the Apex Court held that vulgar abuses made against the Transport Minister and the Chief Minister will not amount to defamation of the State but may amount only to the defamation of the public functionaries concerned and therefore, they are only personal in nature. The facts of that case are that the accused was charged under section 9 of the Punjab security of the State Act, 1953 for making vulgar abuses against the Transport Minister and the Chief Minister. The Hon'ble Supreme Court even though finding that the accused statements amounted to defamation against the Transport Minister and the Chief Minister however held that the vulgar abuses do not undermine the security of the state or friendly relations with foreign states nor did they amount to contempt of court or defamation prejudicial to overthrow the state. The Apex court held that the slogans were certainly defamatory of the Transport Minister and the Chief Minister, but the redress of that grievance was personal to these individuals and the state authorities could not take the cudgels on their behalf.

13. The learned Public Prosecutor relied on the judgment reported in (2015) 8 SCC 238 [RAJDEEP SARDESAI VS. STATE OF ANDHRA PRADESH AND OTHERS] wherein the Apex Court has held as follows:

'133. Further, the contention urged by the appellants' counsel placing reliance upon the aforesaid judgments that the act of the second respondent allegedly aiding Gujarat Police Officers to facilitate taking

Sohrabuddin from Bidar to Ahmedabad, has nothing to do with the discharge of his public functions, hence, the said statement in the news item allegedly defaming the second respondent being telecast and published in electronic and print media does not attract Section 199 CrPC. Therefore, it is contended on behalf of the appellants that the sanction accorded by the State Government is beyond its jurisdiction as the said act of aiding Gujarat Police is an independent act and it is not in relation to the discharge of public functions of the second respondent though he, at that relevant point of time, was discharging his public functions. This contention on behalf of the appellants is also wholly untenable in law, for the reason that determining the question on whether or not the second respondent while aiding Gujarat Police at that point of time was in the capacity of his official discharge of his public functions or otherwise, is to be determined by regular trial after examining the facts, circumstances and evidence on record.

Absolutely, there is no dispute on the above legal position.

14. Here, the so called imputation is against her personal character, whereas in the judgment cited supra, the imputation allegedly put against the accused. The imputation alleged to have been made by the petitioner is that "BJP workers of Nilgiris met him and gave him a list of properties of JJ/SKN in Kodaganad. Another disproportionate. assets case on the cards'', "J.J. Government is clearly terror friendly because the police have sanctioned the holding of a memorial meeting for LTTE's Thillapan in Tamil Nadu" "Jail for Jayalalitha. her to govern is like giving a garland of flowers to a monkey or asking a donkey to appreciate Kalpura incense aroma and lastly, "J.J. likely any moment to depart for Baltimore, U.S.A. to be admitted in Johns Hopkins Hospital for a liver transplant. Tough operation''

15. On careful perusal of the entire statements, though it appears imputing the former Chief Minister, no way in connection with discharge of her official duties and there is no nexus between such statements and discharge of her official duties or constitutional functions of the State. At the most, the imputations affecting the Chief Minister is against her personal character and not against discharge of her official function. Such view of the matter, the complaints ought to have

been filed only under Section 199(6) and not under Sec.199 (2) Cr.P.C.

16. 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 under Section 199(6) of Cr.P.C. before the Magistrate by making private complaint, and remedy under Section 199(2) and 199(4) will not be available. Otherwise, if any criticism or defamation in the nature of personal capacity and 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 G.O.

17. In view of the foregoing reasons and the decisions cited supra, the complaints in C.C.No.46, 44, 45 of 2014 and C.C.No.27 of 2015 on the file of the Principal District & Sessions Judge, Chennai and the same were transferred and now pending on the file of the Special Court of trial for Criminal cases related to M.Ps. & M.L.As. of Tamilnadu, Chennai are quashed.

18. In the result, all the Criminal Original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge,
Special Court of trial for Criminal cases related to
M.Ps. & M.L.As., Chennai.

2. The Principal District and Sessions Judge,
Chennai.

3. The City Public Prosecutor,
City Civil Court Building,
Chennai-104.

+4ccs to Mr.R.Rani, Advocate, S.R.No.40977, 40976, 40975, 40974

+5cc to the Public Prosecutor, S.R.No.41193, 41191, 41188,
41189, 41190

Cr1.O.P.No.15401, 15402, 15404 & 15405 of 2016
and Cr1.M.P.No.7599, 7601, 7605 and 7607 of 2016

svi (CO)
rv (27/01/2021)



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