

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS. 20110 20139 OF 2014

AND

M.P. NOS. 1 OF 2014

1. Dr. R.Krishnamurthy

2. Dr. R.Lakshmipaythy .. Petitioners in both petitions

- Vs -

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

.. Respondent in both petitions

Criminal Original Petitions filed u/s 482 Cr.P.C. praying this Court to call for the records and quash the proceedings in C.C. Nos. 7 and 8 of 2014 on the file of the Principal Sessions Judge, Chennai.

For Petitioners : Mr. I.Subramanian, SC, for
Mr. S.Elambharathi

For Respondent : Mr. C.Iyyapparaj, APP

COMMON ORDER

The present petitions have been filed for the quashment of the the case on the file of the Principal Sessions Judge, Chennai, which has been taken pursuant to the complaints lodged by the respondent in the wake of the Government Orders issued sanctioning prosecution against the petitioners for defamation.

2. The petitioners have approached this Court against the cognizance taken by the learned Principal Sessions Judge, Chennai, in C.C. Nos. 7 and 8 of 2014, in respect of the complaints laid by the respondent initiating defamation proceedings subsequent to the sanction accorded by the Government.

3. It is the case of the petitioners that vide publication dated 28.6.2014 and 30.6.2014, the Daily of the petitioners had carried news items with regard to the action of Hon'ble former Chief Minister Dr.J.Jayalalithaa which resulted in unrest in the political party and also about the shameful act of issuance of Government Orders relaxing the rules and the statement of Jayalalithaa stating that CMDA was not at fault.

4. Insofar as the publication dated 28.6.14 is concerned, the defamation alleged by the respondent pertains to the following :

“ஜெ.உத்தரவால் அ.தி.மு.க வில் கலக்கம்.”

Insofar as the publication dated 30.6.14 is concerned, the defamation alleged by the respondent pertains to the following :-

2 “ அவலம் ! இடிந்த கட்டடத்திற்காக விதிகளை தளர்த்தி
அரசாணைகள் சி.எம்.டி.ஏ. மீது தவறில்லை என்கிறார்
முதல்வர் ஜெ..”

5. Mr. I.Subramanian, learned senior counsel appearing for the petitioners, at the outset, drew the attention of this Court to the complaint lodged by the respondent before the court below, wherein it is averred about the details of the defamatory and derogatory statement alleged to have been made. It is the contention of the learned senior counsel for the petitioners that the publication, which is alleged to be defamatory and derogatory in character, in no way could be termed as defamation or derogation to the particular authority. Further, it is the contention of the learned senior counsel for the petitioners that the tenor of the material published would unequivocally show the working of the Government machinery and it is not a castigation on any office/conduct of the public authority in the discharge of public duty. It is the contention of the learned senior counsel for the petitioners that the right to freedom of speech and expression, by means of taking to the people the happenings around them, is sought to be curtailed by initiation of defamation proceedings, as above. It is the vehement submission of the learned senior counsel that there is not even a single iota of satisfaction of the ingredients of defamation, as codified u/s 499 IPC. The proceedings have been initiated only to put shackles to the right to freedom of speech and expression, which right cannot be curtailed, but should be exercised with reasonable restrictions. It is the submission of the learned senior counsel that allowing the trial to continue would be nothing but travesty of justice and this Court, in exercise of its inherent jurisdiction, should strike down the prosecution and release the petitioners from the shackles of the malicious prosecution.

6. Per contra, Mr.Iyyapparaj, learned Addl. Public Prosecutor appearing for the respondent, while opposing the contention of the petitioners, submitted that the materials carried to print were targeted against the Government to defame it and the work done by the Government, through the public authority, is sought to be tarnished by means of such malicious publication and, if the said acts are not curbed with iron hands, the faith reposed by the people on the Government and its functioning for the welfare of the people would be greatly jeopardized. In the above backdrop, the sanction has been accorded for the prosecution and the court below, on proper appreciation of the materials, has taken the complaint on file and, therefore, no interference is called for.

7. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and also perused the materials available on record as also the various provisions of law to which this Court's attention was drawn.

8. The present complaints, which have culminated in the case before the court below are the off shoots of G.O. Ms. Nos. 507 and 508, Public (L & OH) Dept., dated 30.06.2014, in and by which the Government having felt that the news item carried by the abovesaid daily, of which the petitioners were the Editor/Publisher, were per se defamatory and, therefore, penal provisions relating to defamation stands attracted. In view of the above, on the issuance of the above Government Orders, the respondent preferred the complaint before the learned Principal Sessions Judge, Chennai, which was taken on file.

9. True it is that the Constitution has provided guarantee for freedom of speech and expression, which are part of the fundamental rights enshrined in the Constitution. Equally true it is that the said right of freedom of speech and expression are subject to reasonable restrictions as held by the Hon'ble Apex Court in Subramanian Swamy - Vs - Union of India (2016 (7) SCC 221). There can be no two different views on the above aspect, which has been well settled by a catena of decisions by the Hon'ble Supreme Court as well as this Court and, therefore, this Court is not inclined to add to it any further, but to state that while right to freedom of speech and expression are guaranteed under the Constitution, but, however, the same are subject to reasonable restrictions.

10. Chapter XXI IPC deals with 'Defamation' and takes within its fold Sections 499, 500, 501 and 502 IPC. Section 499 IPC deals with 'Defamation', while Sections 500 and 501 IPC provides for punishment for defamation. To attract the punishment contemplated u/s 500 and 501 IPC, defamation u/s 499 IPC should be made out. For better clarity, Section 499 IPC is

quoted hereunder :-

"499. Defamation -

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person."

11. Though Section 499 IPC deals with the acts that constitutes defamation, prosecution for defamation is envisaged u/s 199 Cr.P.C., which reads as under :-

"199. Prosecution for defamation. (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court make a complaint on his or her behalf.

(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 Governor 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.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the caused of the offence alleged to have been committed by him.

(4) No complaint Under sub-section (2) shall be made by the Public Prosecutor except with the

previous sanction-

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government ;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

(Emphasis Supplied)

12. From a reading of Section 199 Cr.P.C., more especially, sub-section (2), it is manifestly clear that where the offence of defamation 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 Governor 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. In the case on hand, defamation is alleged to have been committed against the Minister of Transport, viz., Mr. Senthil Balaji, and, therefore, cognizance has been taken on the complaint of the Public Prosecutor upon sanction being accorded.

13. The law on defamation has been dealt with extensively by the Hon'ble Apex Court in Subramanian Swamy - Vs - Union of India (2016 (7) SCC 221), adverting to various facets of defamation. One of the main contention raised in the said case relates to 'Reasonable Restriction' found in Article 19 (1) of the Constitution and in that context, the Hon'ble Apex Court held as under :-

"130. The principles as regards reasonable restriction as has been stated by this Court from time to time are that the restriction should not be excessive and in public interest. The

legislation should not invade the rights and should not smack of arbitrariness. The test of reasonableness cannot be determined by laying down any abstract standard or general pattern. It would depend upon the nature of the right which has been infringed or sought to be infringed. The ultimate "impact", that is, effect on the right has to be determined. The "impact doctrine" or the principle of "inevitable effect" or "inevitable consequence" stands in contradistinction to abuse or misuse of a legislation or a statutory provision depending upon the circumstances of the case. The prevailing conditions of the time and the principles of proportionality of restraint are to be kept in mind by the court while adjudging the constitutionality of a provision regard being had to the nature of the right. The nature of social control which includes public interest has a role. The conception of social interest has to be borne in mind while considering reasonableness of the restriction imposed on a right. The social interest principle would include the felt needs of the society.

* * * * *

131. As the submissions would show, the stress is given on the right to freedom of speech and expression in the context of individual growth, progress of democracy, conceptual respect for a voice of dissent, tolerance for discordant note and acceptance of different voices. Right to say what may displease or annoy others cannot be throttled or garrotted. There can never be any cavil over the fact that the right to freedom of speech and expression is a right that has to get ascendance in a democratic body polity, but at the same time the limit has to be proportionate and not unlimited. It is urged that the defamation has been described as an offence under Section 499 IPC that protects an individual's perception of his own reputation which cannot be elevated to have the status of public interest. The argument is that to give a remedy by taking recourse to criminal jurisprudence to curb the constitutional right, that is, right to freedom of speech and expression, is neither permissible nor justified. The provision possibly could have met the constitutional requirement had it been associated with law and order or breach of peace but the same is not the position. It is also

canvassed that in the colonial era the defamation was conceived of to keep social peace and social order but with the changing climate of growing democracy, it is not permissible to keep alive such a restriction."

(Emphasis supplied)

14. From the above proposition of law, it is manifestly clear that the fundamental right to freedom of speech gets ascendance over individual's perception of his own reputation and that the constitutional right cannot be curtailed by taking recourse to criminal jurisprudence. The above decision of the Supreme Court was in the wake of individual's right vis-a-vis right to freedom of speech and expression as enshrined in the Constitution.

15. The framework of Section 199 (2) Cr.P.C. is mainly for the purpose of protecting the public servants and holders of public office from being defamed due to the acts done by them in the interest of the public. At the same time, while safeguarding the stature of the public office, the stature of the individual holding the public office is also sought to be safeguarded. Therefore, Section 199 (2) Cr.P.C. serves a dual purpose, in that it not only safeguards the public office from being taken for a ride by unscrupulous elements, but at the same time, also safeguards the individual holding the public office from rave criticism, which defames his/her reputation.

16. This Court, in *S.Santhanagopal & Ors. - Vs - Union of India* (W.P. Nos. 25562, 25563 & 28277/2014, vide order dated 4.2.2020), has held as under :-

"In the case on hand, as aforesaid, defamation is alleged against the Chief Minister of the State, more particularly the public office in which duties have been discharged. On a careful analysis of the provision of law as envisaged u/s 199 (2) Cr.P.C., what flows from the said sub-section is that such defamation should be directly attributable to the public function discharged by the said individual and only in such a scenario, sub-section (2) to Section 199 Cr.P.C. would stand attracted."

17. In the above context, a careful perusal of the complaints, extracted supra, unambiguously and categorically reveals that what has been taken to print by the petitioners in their daily is (i) that due to the action taken by Hon'ble former Chief Minister Dr.J.Jayalalithaa, there is unrest within the political party and (ii) that it is a shame that Government Orders have been issued relaxing the rules and the statement has

been made by Hon'ble Former Chief Minister Dr.J.Jayalalithaa stating that CMDA was not at fault. A detailed examination of the publications clearly reveal that what has been carried to print in the daily is that the action of Former Chief Minister Dr.J.Jayalalithaa has caused unrest within the political party and that the issuance of Government Orders relaxing the rules is a shameful act and that Former Chief Minister Dr.J.Jayalalithaa has stated that CMDA is not at fault.

18. In R. Rajagopal v. State of T.N. (1994 (6) SCC 632), the Hon'ble Supreme Court has broadly summarised the principles that flow in cases relating to law of defamation and for better clarity, the same is quoted hereunder :-

"26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or

for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media."

(Emphasis supplied)

19. In the first publication, which relates to unrest among the members of the political party, it is seen that it is merely a news, which has been published in the daily. The said news item has not cast any aspersion on either the public office held by the individual or in the discharge of duties of the public office by the individual. In fact, there is no aspersion case on any front in the said news publication.

20. Insofar as the second publication is concerned, which relates to the crumbling of some structures, the daily has reported about the issuance of Government Orders, whereby rules were said to have been relaxed. It is not in dispute that

relaxing the rules, the Government Orders have been issued. May be the relaxation reported may not be accurate, but nonetheless, relaxation granted is a matter of record. Further, the allegation that aspersion has been casted against Jayalalithaa, while she inspected the site, where the building had crumbled, stating that CMDA is not at fault is also a statement, which has not been disputed. To be more precise, news items have been published in the newspapers, but the said news items cannot be said to castigate or make derogatory remarks, maligning the public office of the Chief Minister or that the conduct of the individual in the discharge of her public duties.

21. As has been time and again held by the Apex Court, it is not necessary for the Press/Media to ascertain the truthfulness or the veracity of the statements made. Further, a careful analysis of what has been published in the print media shows that it is a news item, which is intended for reading, which casts no aspersion against any individual and it is worth for what it is worth. Section 199 (2) Cr.P.C. clearly and unequivocally mandates that the Sessions Court can take cognizance of the complaint by the Public Prosecutor, on appropriate sanction, only when such defamatory statements are made about the conduct of the individual in the discharge of his/her public functions. The petitioners have not imputed any allegations or made false accusations against Hon'ble Former Chief Minister Dr.J.Jayalalithaa nor against her conduct in the discharge of duties of the public office. Rather, it is clear not only from a reading of the news item published by the petitioners, but also the extracted portion of the complaint, which was in culmination of the sanction orders, that no defamatory or derogatory statement, much less, statements tarnishing the public functions of the authority has been made. Therefore, the initiation of the prosecution for defamation u/s 199 (2) Cr.P.C. is not sustainable.

22. True it is that it is the duty of the Courts to shield the constitutional functionaries from the vagaries of the unscrupulous elements by invocation of its powers u/s 199 (2) Cr.P.C. But such power is to be exercised in a just and reasonable manner on an in-depth analysis of the case, as exercise of such power puts the other person, against whom prosecution is initiated, in a calamitous situation to defend himself. It is the bounden duty of the Court to separate the grain from the chaff so as to arrive at a just and reasonable decision so that the interests of both sides is safeguarded and the majesty of law is upheld.

23. In Santhanagopal's case (supra), this Court has held as under :-

"35. The freedom of press to bring to the people the happenings in and around them

forthwith is the fulcrum of a democratic functioning of the State. Clogging the said system by curtailing the right and freedom is nothing but a direct invasion on the freedom of speech and expression, which is enshrined in Article 19 (1) of the Constitution. The constitutional guarantees, as adumbrated in Article 19 (1) is only subject to exceptions when it concerns the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Defamation, being one of the exceptions carved out in Article 19 (1), it is the duty of the Court to see to it that defamation is made out prima facie and it should not be an empty formality, thereby jeopardizing the said freedom. While it is the duty of the Court to safeguard the interests of those persons holding public office from being defamed for their discharge of their public functions, equally, the citizens have also to be safeguarded from the Governmental machinery against malicious prosecution, which, otherwise will whittle down actual intent of the Parliament in enacting the said law. The Court, as the ultimate arbiter, is clothed with the responsibility to surf through the materials to arrive at a fair and just reasoning, which will safeguard the constitutional values and uplift the morale of the democratic polity.

36. The entire democratic polity achieves its high only when there is an uncompromising print/visual media, which takes to the citizens of the country, the happenings around them. Derailing the print media from publishing content, which in no way could be termed as defamatory, by initiating prosecution, is nothing but an attack on the rights enshrined under the Constitution.....

37. It is also to be brought on record that the freedom of speech and expression is subject to reasonable restrictions. Though in the present case, as pointed out above, the media have not traversed beyond their limitation in respect of reporting the interview, however, as a matter of caution, the media has also to satisfy itself as to the details, which are to be carried on in print, as the faith reposed by the citizens on the media should be the foremost consideration for a better democratic functioning, lest the

same will not only have a detrimental effect on the common man, but on the functioning of the governmental machinery as a whole."

24. Further, it is to be pointed out that the complaint in one case is verbatim reproduced in the other case as well by the respondent. The complaint in one case cannot be tailor-made for the other case as well. However, the said statement stands belied by the act of the respondent in filing complaints, which are verbatim reproduction, but for the content of the publication. Freedom of the press cannot be curtailed in such fashion and the following words of Patanjali Sastri, J., in Brij Bhushan - Vs - State of Delhi (AIR 1950 SC 129) stands tall in upholding the constitutional and democratic values :-

"Every free man has undoubted right to lay what sentiments he pleases before the public, to forbid this, is to destroy the freedom of press."

25. For the reasons aforesaid, this Court is of the considered view that the facts and circumstances of the case does not in any way make out a case for defamation and, accordingly, C.C. Nos. 31 and 32 of 2014 on the file of the Principal Sessions Judge, Chennai, are devoid of merits and are liable to be quashed.

26. In the result, the criminal original petitions are allowed. The complaint in C.C. Nos.7 & 8 of 2014 on the file of the Principal Sessions Judge, Chennai are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

GLN

To

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

+2cc to M/s S.Elambharathi, S.R.No.12097 & 12096

CRL.OP.NOS.20110 & 20139 of 2014

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