

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS. 20321 & 20322 OF 2014

AND

M.P. NOS. 1 OF 2014

1. Kutty @ Krishnamurthy .. Petitioner in Crl.Op 20321/2014
2. A.K.Sundaramurthy .. Petitioner in Crl.Op 20322/2014

- Vs -

The Public Prosecutor
Vellore District
Vellore.

.. 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. 4 and 5 of 2013 on the file of the Principal District Judge, Vellore.

For Petitioners: Mr. R.Vivekananthan

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 Prl. District & Sessions Judge, Chennai, which have 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 District Judge, Vellore, in C.C. Nos. 4 and 5 of 2013, 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 in the public meeting held on 25.01.13, the petitioners have uttered defamatory and derogatory statements against the Chief Minister of Tamil Nadu which had injured her credit and lowered her

esteem and reputation in the minds of the public at large, who had gathered for the said meeting.

4. Insofar as the speech of the petitioner in Crl.OP. No.20321/14 is concerned, the defamatory statement, as alleged in the complaint, which has been translated into English, is as under :-

“Do not I know how to sing I sold tender coconuts at the age of seven and your eyes meet with my sword... The Government run by the AIADMK party is very bad. They are praising a Kannadiga lady without good character Your Mother is a thief, etc...”

Insofar as the speech of the petitioner in Crl. OP. No.20322/14 is concerned, the defamatory statement, as alleged in the complaint, which has been translated into English, is as under :-

“Insane person, Jayalalitha, has no right to ask my leader, Kalaingnar, what right he has to speak about Thiruvalluvar.The insane person, Jayalalitha, a leaf may up because of the blow of the wind, and with another burst of wind, the leaf would fall down. The salivated leaf would fall down....”

5. Mr. Vivekananthan, learned counsel appearing for the petitioners drew the attention of this Court to the complaints lodged by the respondent before the court below. It is the contention of the learned counsel for the petitioners that the statements, which are alleged to be defamatory and derogatory in character, are in anyway imputing any allegation against the conduct of the individual in the discharge of public functions. The said statements, which have been spoken at a public meeting, organised at the behest of one political party, are spoken against the leader of another political party, in the individual capacity of the person and not against the office of the individual nor about the conduct of the individual in the discharge of duties of said office. It is the contention of the learned counsel for the petitioners that if at all the said statements are alleged to defame the individual, the individual alone has a right to file complaint against the petitioners and the Governmental machinery cannot be permitted to invoke the provisions of Section 199 (2) Cr.P.C., which is impermissible in law. It is therefore submitted that 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 statements

were not only defamatory, but were more derogatory and were clearly intended for the purpose of maligning the name of the Chief Minister and the duties discharged by the Chief Minister. The statements tarnished her image in front of the public at large, as the statements were made at a gathering and, therefore, the work of the Chief Minister, being for the welfare of the people, maligning her name in front of them, should be curbed with iron hands, else 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. 585 and 657, Public (L & OH) Dept., dated 18.6.13 and 5.7.13 respectively, in and by which the Government felt that statements made by the petitioners 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 complaints before the learned Principal District and Sessions Judge, Vellore, which were 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 Hon'ble Chief Minister in respect of her conduct in the discharge of her public functions and, therefore, cognizance has been taken on the complaints 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 reveal that the alleged statements have been made against the

individual (who was then holding office of the Chief Minister). It is further seen from the statements, which were spoken to by the petitioners in the course of a political rally, that the statements have been made against the individual in personal capacity and not about the conduct of the public authority in the discharge of public duty. A detailed examination of the statements clearly reveal that the statements are political digs, taken by one party against the other party in a political battle field and it is not against any functions, which have been discharged by the individual in public capacity.

18. The conduct of the members of the political parties casting aspersions against the members of the other political parties is merely a political rivalry and in all circumstances, it cannot be clothed with constitutional immunity to bring the said statements within the ambit of Section 199 (2) Cr.P.C. It is to be pointed out that statements made by the members of one political party against its rival faction, must be within the bounds of decorum and must not in any way malign the character of the individual. If any such act is done, it is for the individual, in personal capacity, to take recourse to law against the said individual and the criminal machinery cannot be set in motion by the Government to reap political gains, as the Government is intended for the welfare of the people and not for settling political scores between two rival political factions.

19. Right to freedom of speech and expression vis-a-vis reasonable restriction, as stated above, as found in Article 19 (1) of the Constitution has been demarcated by the Hon'ble Apex Court in Subramanian Swamy's case (supra) and this Court, in respectful agreement with the same, merely reiterates that it is the duty of the individuals to respect the Constitution and adhere to the constitutional guarantees that have been provided to the citizens. It is the duty of each and every citizen to walk within the framework of the Constitution and not to cross the limits and any violation of the rights of other persons thereof is definitely prone to prosecution. But violation of individual's right cannot be given a mask of constitutional immunity, merely on the ground that the individual holds a constitutional office, so as to proceed against the persons causing such violation.

20. In the case on hand, it is amply clear not only from the report, which is a verbatim transcription of the the speech of the petitioners, but also from the Government Orders, that the speech, the portions of which are said to have maligned and tarnished the reputation of the Hon'ble Chief Minister, could in no way be termed to be statements, which impinges on the conduct of the discharge of duties of the public authority.

21. 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.

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

"35. 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."

(Emphasis Supplied)

23. This Court feels that in the interest of the welfare of the society, a word of caution is necessary to be given to the petitioners as well in this case. True it is that they speak in

a political rally, however, it is to be borne in mind that the statements made by such of those persons, who speak in such meetings, are people, who have a standing in the society and they are looked upon as model citizens by the public at large. Casting aspersions or maligning the character or conduct of the individual, be it a general person or a person of the opposite party, holding a constitutional post, would definitely neither augur well within their political party nor with the public at large. The framers of our Constitution have left it to the wisdom of the persons at the helm of power to act for the welfare of the society and politics, being the climbing board to work for the welfare of the public, cannot be used as a forum for maligning and tarnishing the image of any person and definitely the heads of the political party would not favour such an act, which is in detriment and derogation of an individual. It is high time, that the members of the political units realise their responsibilities towards the society and act for its betterment, rather than engage themselves in the act of mud-slinging against each other to gain any political advantage.

24. 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. 4 & 5 of 2013 on the file of the Principal District and Sessions Judge, Vellore, are devoid of merits and are liable to be quashed.

25. In the result, the criminal original petitions are allowed. The complaint in C.C. Nos.4 and 5 of 2013 on the file of the Principal District and Sessions Judge, Vellore, are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Principal District and Sessions Judge
Vellore.
2. The Public Prosecutor
Vellore District
Vellore.

3. The Public Prosecutor,
High Court, Madras.

CRL... O.P. NOS. 20321
& 20322 OF 2014

MP (CO)
GS (25/08/2020)