



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.02.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 25562, 25563 & 28277 OF 2014

S.Santhanagopal

.. Petitioner in W.P. 25562/14

Sunil Nair

.. Petitioner in W.P.25563/14

Dr. R.Krishnamurthy

.. Petitioner in W.P.28277/14

- Vs -

1. Union of India

rep. by its Secretary

Ministry of Law and Company Affairs

Shastri Bhavan

New Delhi 110 001.

2. State of Tamil Nadu

rep. by its Secretary to Government

Public Department, Fort St. George

Chennai 600 009.

3. The City Public Prosecutor

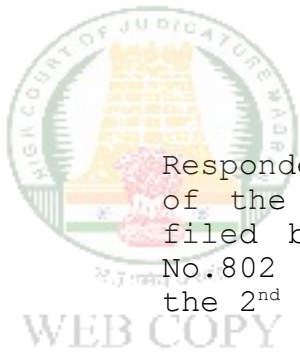
City Civil Court Buildings

Chennai 600 104.

.. Respondent in all the petitions

Prayer:W.P. Nos.25562 and 25563 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to impugned G.O. Ms. No.803 Public (Law & Order H) Dept., dated 05.09.2014 issued by the 2nd Respondent and the complaint in C.C. No.40 of 2014 on the file of the learned Principal District and Sessions Judge, Chennai filed by the 3rd Respondent pursuant to impugned G.O. Ms. No.803 Public (Law & Order H) Dept., dated 05.09.2014 issued by the 2nd Respondent and quash the same.

Prayer:W.P. No.28277 of 2014 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to impugned G.O. Ms. No.802 Public (Law & Order H) Dept., dated 05.09.2014 issued by the 2nd



Respondent and the complaint in C.C. No.39 of 2014 on the file of the learned Principal District and Sessions Judge, Chennai filed by the 3rd Respondent in pursuant to impugned G.O. Ms. No.802 Public (Law & Order H) Dept., dated 05.09.2014 issued by the 2nd Respondent and quash the same.

For Petitioners: Mr. Prashant Rajagopal in
WP Nos.25562 & 25563/2014
Mr. I.Subramanian, SC, for
Mr. S.Elambharathi in WP 28277/14

For Respondents: Mr. G.Karthikeyan, ASG for R-1
Mr. S.R.Rajagopal, AAG, assisted by
Mr. N.Inbanathan, AGP for RR-2 & 3

COMMON ORDER

The various facets of defamation have been dealt with by the Hon'ble Supreme Court in the decision in Subramanian Swamy - Vs - Union of India (2016 (7) SCC 221), wherein 'Reasonable Restriction' in the wake of Article 19 (1) of the Constitution was one of the foremost contention raised before the Hon'ble Apex Court and in that context, the following has been observed :-

"19.3. The Preamble to the Constitution opens with the word "Justice". It is the concept of Dharma. The foundation of administration of justice after the advent of the Constitution is the motto "yato dharmastato jayaha". Judge-made law, insofar as the right to life is concerned, is to protect the inherent right to reputation as part of the right to life. No one can be deprived of that right except according to the procedure established by law. The word "law" in Article 21 has to necessarily bear interpretation that it is a procedure established by plenary legislation only. Whenever any right conferred by Part III is abridged or restricted or violated by "law", as widely defined in Article 13 for the purposes of that Article, it is rendered void. Right to reputation is an inherent right guaranteed by Article 21. Duty not to commit defamation is owed to the community at large, because the right to reputation is a natural right. The personality and dignity of the individual is integral to the right to life and liberty and fraternity assuring dignity of an individual is part of the Preamble to the Constitution. The right to life or personal liberty includes dignity of individuals



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which is so precious a right that it is placed on a higher pedestal than all or any of the fundamental rights conferred by Part III. The right to reputation is an inherent right guaranteed by Article 21 and hence, the right to freedom of speech and expression under Article 19 (1)(a) has to be balanced with the right under Article 21 and cannot prevail over the right under Article 21."

2. As expostulated by the Hon'ble Apex Court, the right to reputation, inherent in Article 21 has to be balanced with right to freedom of speech and expression under Article 19 (1) of the Constitution. In this backdrop, the present issue has arisen before this Court, which is common in all the petitions and, therefore, they are disposed of by this common order.

3. The petitioners have approached this Court against the issuance of G.O. Ms. No.802 and 803 Public (Law & Order H) Dept., dated 05.09.2014 as also the complaint in C.C. Nos.39 and 40 on the file of the learned Principal District and Sessions Judge, Chennai, which have been filed in pursuant to the above Government Orders. The prayer, as made by the petitioners is for the quashment of the above Government Orders as well as the cases on the board of the learned Principal District & Sessions Judge, Chennai.

4. The above said criminal complaints have been filed by the City Public Prosecution/3rd respondent herein before the Principal Sessions Court, Chennai, for alleged offences u/s 500 and 501 IPC. The sum and substance of the allegation in the said complaints is that the petitioners have published allegedly defamatory news report in their respective News Daily, viz., 'Times of India - Chennai Edition' and 'Dinamalar' on 4.9.14 defaming the conduct of the discharge of public functions by the public servant, viz., the Chief Minister of the State. The dailies, which published the said news item, carried the following :-

"Times of India

"Swamy said his success in release of fishermen had rattled Jayalalithaa, " who had made a business of the plight of fishermen by doing nothing about it except writing letters to you, and earlier to Manmohan Singh, and releasing to the press, " The BJP leader alleged that the chief minister saw this success as threatening her political position in the impending Assembly polls.

In his letter to Modi, Swamy has also criticized the chief minister for appropriating



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to herself as her achievement, his hard work, such as on the Mullaperiyar dam, installation of the Thevar statue in Parliament and the 2G spectrum scam".

Dinamalar

“அவர் மீனவர்கள் பிரச்னை குறித்து பிரதமர்களுக்கு கடிதம் எழுதி, அதை பத்திரிக்கைகளில் செய்தியாக்குவதை தவிர, வேறெதுவும் செய்ததில்லை.

ஆனால், தமிழகத்துக்கு கிடைத்த வெற்றிகளை எல்லாம், தன்னால் கிடைத்த வெற்றி என, பறைசாற்றுகிறார்.

சிலை அமைத்தது.....

முல்லைப் பெரியாறு அணை விவகாரம், பார்லிமென்ட் வளாகத்தில், தேவர்சிலை அமைத்தது, 2 ஜி ஸ்பெக்ட்ரம் ஊழல் மற்றும் சேது சமுத்திர விவகாரம் ஆகியவை அனைத்தும், தன்னால்தான் நடந்தவை என, கடந்த தேர்தல்களில், அவர் பிரச்சாரம் செய்துள்ளார்.

தற்போது, மீனவர் பிரச்சனையையும், 2016 தமிழக சட்டசபை, தேர்தலுக்காக பயன்படுத்த முயற்சிக்கிறார். எனது கடின உழைப்பினால், தமிழகத்துக்கு கிடைத்த வெற்றிகளை, அவரால் கிடைத்த வெற்றி என, தவறாக பிரசாரம் செய்கிறார்.”

5. The impugned Government Orders were issued as the Government felt that the news item carried by the abovesaid dailies, 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 impugned Government Orders, the 3rd respondent preferred the complaint before the learned Principal Sessions Judge, Chennai, which was taken on file and assailing the above, the present writ petitions have been filed.

6. Mr. I.Subramanian, learned senior counsel, appearing for the petitioner in W.P. No.28277/14, leading the arguments, submitted that the complaint preferred on the basis of the impugned Government Orders are, per se, not maintainable, as no defamation, as contemplated u/s 499 IPC is made out for it to be punished u/s 500 and 501 IPC. Learned senior counsel submitted that the whole episode, which has culminated in the present complaints, are on the eve of the political campaigns, which was covered by the print and visual media and whatever was addressed, the essence of the said speech were carried out by the print media herein and, therefore, this could in no way be termed as a defamatory article, aimed at tarnishing the image of the public authority.

7. It is the further submission of the learned senior counsel that it is the act of the individual in her personal capacity, which was highlighted in the said speech and not the office of the Chief Minister and, therefore, taking cognizance for prosecution for defamation is unsustainable. In this regard, learned senior counsel laid emphasis on Section 199 (2)



Cr.P.C., to drive home the point that the defamation in the conduct of discharge of public function should be made out for an offence to stand attracted u/s 499 IPC. It is the submission of the learned senior counsel that even a bare perusal of the Government Orders categorically reveal that what was spoken to and which was subsequently carried on in print by the petitioners were not in relation to the discharge of a public function, but only in the individual capacity of the person and, therefore, invoking the provision u/s 199 (2) Cr.P.C. is unsustainable and, therefore, the impugned Government Orders and the pursuant prosecution before the Principal Sessions Judge are liable to be quashed.

8. Learned senior counsel placed reliance upon the decision of a learned single Judge of this Court in W.P. No.25298 of 2012, vide order dated 6.6.2018, wherein in similar circumstances, this Court, has held as under :-

"7. The learned counsel would rely upon a decision of this Court rendered in Crl.O.P.No.14677 of 2017 dated 08.02.2018, wherein, the learned Judge of this Court has quashed the criminal case arising under similar circumstances. The order passed in the criminal Original Petition is extracted herein below:

"2.Though the complaint came to be filed in the year 2011 itself, the charges are yet to be framed. It is submitted by the learned counsel for the petitioner that since the trial Court had kept the matter pending for six years without any progress, the petitioner is deprived of speed and fair trial and as such, the complaint requires to be quashed.

3. It is further seen that the petitioner herein is the President of political faction. The remarks which are claimed to be defamatory are from the interview given by the petitioner in a Tamil Newspaper Daily "Dhinamani" against the then Chief Minister.

4. On a perusal of the remarks made in the complaint, it can be clearly seen that those remarks are only a public criticism and it cannot be deemed as personal defamation. The petitioner herein has expressed these words in good faith and hence it cannot be construed to be a Public defamation.

5. Section 499 IPC reads as follows:

"Defamation- Whoever, by words either



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spoken or intended to be read or by signs or by visible representations, makes or published 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 excepted, to defame that person.

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation:3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception: Imputation of truth which public good requires to be made or published- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception - Public conduct of public servants - It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further.



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Third Exception - Conduct of any person touching any public question - it is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception - Publication of reports of proceedings of courts.- It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation- A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception - Merits of case decided in Court or conduct of witnesses and others concerned - It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct and no further.

Sixth Exception - Merits of Public performance - It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation - A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception- Censure passed in good faith by person having lawful authority over another - It is not defamation in a person having over another any authority, either



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conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eight Exception-Accusation preferred in good faith to authorised person - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception- Imputation made in good faith by person for protection of his or other's interests - It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception - Caution intended for good or person to whom conveyed or for public good-It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

In view of the third exception to Section 499 IPC, the offence under Section 500 IPC is not made out against the petitioner herein. While that being so, I am unable to comprehend as to how the Trial Court can proceed with the complaint for coming to a logical conclusion. Moreover, the proceedings have been unjustifiably prolonged and denial of speedy trial violates the fundamental rights of the petitioner.

9. Mr. Prashant Rajagopal, learned counsel appearing for the petitioners in W.P. No.25562 and 25563 of 2014, while reiterated the submissions advanced by the learned senior counsel, further submitted that allowing the complaints to proceed would be nothing but an infringement of 'Right to Freedom of Speech and Expression' as envisaged under the Constitution. It is further submitted by the learned counsel that allowing the proceedings to continue would undermine the



fundamental rights guaranteed under the Constitution, which will be very much against the spirit of the Constitution.

10. Per contra, Mr. S.R.Rajagopal, learned Addl. Advocate General appearing for respondents 2 and 3 submitted that the right to freedom of speech and expression is not an absolute right, but is always subject to reasonable restrictions. It is the further submission of the learned Addl. Advocate General that the imputations made by the petitioners in publishing the news item was not against the individual, but rather against the public office held by the individual and, therefore, the same squarely stood attracted under Section 199 (2) Cr.P.C. and, therefore, the sanction for prosecution cannot be said to be bad.

11. It is the further contention of the learned Addl. Advocate General that the tenor of the news item would clearly reveal that the imputation made, which has subsequently been carried in print by the petitioners is not against the individual, but rather against the office, which the individual held and, therefore, it cannot be merely said to be a speech made during a political campaign or an interview given to the Press, but solely intended for tarnishing the image of the individual and, therefore, the prosecution for defamation is maintainable.

12. In fine, it is submitted by the learned Addl. Advocate General, that the Government, after due application of mind to the materials placed before it and after carefully going through the same, has decided to accord sanction for prosecution pursuant to which the Government Orders impugned were issued culminating in the filing of the complaints and, therefore, the petitions deserve to be dismissed. It is further submitted that the criminal prosecution should be allowed to go through to its logical conclusion and this Court should not, at this stage, interfere with the said prosecution, more especially by invoking its inherent powers under Article 226 of the Constitution and, if at all the petitioners are aggrieved, they ought to have approached this Court under the relevant provision of law by filing appropriate petitions and not invoking the inherent jurisdiction of this Court. Reliance was placed on the following decisions by the learned Addl. Advocate General :-

- i) Mansukhlal Vithaldas Chauhan - Vs - State of Gujarat (1997 (7) SCC 622);
- ii) Tata Cellular - Vs - Union of India (1994 (6) SCC 651)

13. This Court has carefully considered the submissions advanced by the learned senior counsel for the petitioners and the learned Addl. Advocate General appearing for respondents 2 and 3 and perused the materials available on record as also the judgments to which this court's attention was drawn.



14. 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's case (supra). 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.

15. Before going to the crucial issue involved in these petitions, one of the contention raised by the respondent relates to the maintainability of the present petitions vis-a-vis power of the Court under Article 226 of the Constitution to quash the criminal prosecution, when a remedy is available u/s 482 Cr.P.C.

16. In Pepsi Foods Ltd. & Anr. - Vs - Special Judicial Magistrate & Ors. (1998 (5) SCC 749), the Hon'ble Supreme Court had occasion to consider the power of judicial review of the High Court in criminal matters. In that context, the Hon'ble Supreme Court held as under :-

"22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a



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case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

* * * * *

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

17. From the above proposition of law laid down by the Hon'ble Apex Court, the power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 Cr.P.C. have no limits but more the power, more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 Cr.P.C., it may not be necessary to invoke the provisions under Article 226. The Apex Court further held that it is within the power of the High Court to treat a petition under a



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different nomenclature, even though the same is filed under a different nomenclature. Therefore, it is clear from the above that the High Court has unfettered power under Article 226 to deal with criminal matters and it is not estopped from entertaining the petition, but it is well within its power to treat the said petition as a quash petition u/s 482 Cr.P.C.

18. Once this Court has arrived at the conclusion that it is within its power to entertain this petition, the crucial issue on hand relating to defamation needs to be decided. Before dwelling into the issue whether defamation is made out or not, it would be useful to have a careful look at the Government Order Nos.802 and 803 dated 5.9.2014, which have already been extracted supra. A careful perusal of the above Government Orders reveal an allegation is levelled that the said defamatory statements have been carried on in the print media knowing fully well that the said statements will harm the reputation of the Hon'ble Chief Minister of Tamil Nadu in respect of her conduct in the discharge of her public functions. From the above it is unambiguously clear that the said Government Orders have been issued on the ground of defamation being alleged in the discharge of public function of the individual.

19. 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."

20. It is the contention of respondents 2 and 3 that the words spoken by the individual, which has been published in black and white in the print media, intended to be read, knowing fully well that it will cause harm and affect the reputation of the person, clearly falls within the ambit of Section 499 Cr.P.C. and, therefore, the Government, after carefully considering all the materials, has thought it fit to sanction prosecution and, therefore, no fault can be found with the said sanction.



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21. 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



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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)

22. 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 Chief Minister of the State and, therefore, cognizance has been taken on the complaint of the Public Prosecutor upon sanction being accorded.

23. 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



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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)



24. 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.

25. In the case on hand, it is not the individual's reputation that is said to be at stake, but it is the public office that is said to be defamed, which in turn has defamed the work performed by the individual holding the said public office.

26. 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.

27. 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.

28. In the above context, a careful perusal of the Government Orders, extracted supra, unambiguously and categorically reveals that what has been spoken to by Dr.Subramaniam Swamy before the Press, which has been taken to print by the petitioners in their dailies is that Ms.Jayalalithaa has made a business of the plight of fishermen by doing nothing about it except writing letters and that it is alleged by Dr.Subramaniam Swamy that his success is threatening her political position in the impending Assembly polls. It is further alleged, as is evident from the said Government Orders that Dr.Swamy has criticized the Chief Minister for appropriating to herself as her achievement his hard work.



Therefore, the sum and substance of the allegation is that the person holding the public office is trying to appropriate to herself the achievements, which is due to the person, who made the alleged defamatory criticism. It is further evident that the order has been passed stating that Dr.Swamy has made the defamatory statements in respect of the conduct in the discharge of public functions by the said individual.

29. It is to be noted that sanction has been accorded for prosecution of Dr.Subramaniyan Swamy also u/s Section 499 IPC. It is clear from the materials available on record that those statements have been made by Dr.Subramanian Swamy at the time when he was interviewed by the media. Therefore, it is clear from the above that his interview to the media has been carried in print by the petitioners.

30. 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



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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)

31. In the case on hand, it is on record that the statements carried on in print by the petitioners are based on the statements made by Dr. Subramanian Swamy in the interview to



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the media. Therefore, what the media has carried are the views expressed by Dr.Subramanian Swamy. Based on the principles enumerated by the Apex Court above, it is not necessary for the Press/Media to ascertain the truthfulness or the veracity of the statements made by Dr.Subramanian Swamy. Further, a careful analysis of the above statements and also the materials published in the print media based on the above interview shows that Dr.Swamy has made those statements in the course of his interview and further he has spoken about Dr.Jayalalithaa, as a person, who is trying to take credit for the work done by him and has in no way imputed any defamatory statements against the office of the said individual. 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. Nowhere in the Government Orders, it is spelt out that the defamatory statements have been made with regard to the discharge of public functions by Dr.Jayalalithaa. Rather, even a bare reading of the Government Orders reveal that the Dr.Subramanian Swamy has stated that Dr.Jayalalithaa is making false propaganda as if the success has been achieved because of her efforts, though it was due to his efforts that success was achieved and the act of Dr.Jayalalithaa is for the purpose of enhancing her image in the Assembly Polls. The sum and substance of the above clearly reveal that the statements, which are alleged to be defamatory are not against any public function discharged by the said individual in her official capacity, but it is a criticism levelled against Dr.Jayalalithaa in her personal capacity. The print media has carried the statements made by Dr.Swamy. The petitioners have not imputed any allegations or made false accusations against Dr.Jayalalithaa nor against the public office held by the individual. Rather, it is clear not only from a reading of the news item published by the petitioners, but also the extracted portion in the Government Orders, that it is a personal criticism and not a criticism against the discharge of public function by the individual.

32. Learned senior counsel for the petitioner relied on the order passed by this Court in W.P. No.25299/12, wherein, a learned single Judge of this Court, relying on the decision in Crl. O.P. No.14677 of 2017 wherein, complaint was quashed on the ground that the third exception to Section 499 IPC stood attracted and, therefore, the offence u/s 500 IPC is not made out against the petitioner therein, and, accordingly, quashed the complaint.

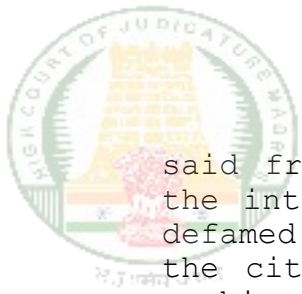
33. Though this Court is in agreement with the said view taken in the said decision, however, is of the view that in the



present case, the ingredients for the filing of a complaint by the Public Prosecutor, as enumerated in Section 199 (2) Cr.P.C. itself has not been fulfilled. As stated supra, the defamation should be in respect of the conduct of the public servant in the discharge of his/her public functions, which is not the case on hand. As elaborately discussed above, the statements made, at best, could only be termed as criticism, that too, levelled by Dr.Subramanian Swamy against Dr.Jayalalithaa claiming his achievements as her achievements. The said statements, which have been carried by the petitioners in print, by no stretch of imagination, could be said to be defamatory statements made with a view to harm the reputation of the office of the Hon'ble Chief Minister of Tamil Nadu in respect of her conduct in the discharge of her public functions. Therefore, the initiation of the prosecution for defamation u/s 199 (2) Cr.P.C. is not sustainable for the offence alleged to have been committed u/s 499, 500 and 501 IPC.

34. 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.

35. In the present case, the action of the State in initiating prosecution against the petitioners for their act of carrying the interview of Dr.Subramanian Swamy to print is a direct invasion into the right of freedom of speech and expression, which cannot be curtailed by the invocation of Section 499 IPC. 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. In the present case, the print media, having merely reported the interview of Dr.Subramanian Swamy, without adding anything to it, which is even evident from the Government Orders, cannot be termed to have published materials, which has harmed the reputation of the office of the Hon'ble Chief Minister of Tamil Nadu in respect of her conduct in the discharge of her public functions.

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.

38. Before parting with the case, one other important fact, which has attracted the attention of this Court, also needs to be noted here. The print media had carried the news on 4.9.14 and the Government Orders, sanctioning prosecution u/s 499, 500 and 501 Cr.P.C. have been issued on 5.9.14. Within a span of 24 hours, the said sanction for prosecution has been accorded in terms of the power vested u/s 199 (4) Cr.P.C. This Court, even at the outset, is not imputing any malice in the action of the prosecution. However, the speed with which such prosecution has been initiated is an issue, which passes through the mind of this Court.



39. The Hon'ble Apex Court in Barium Chemicals Ltd. - Vs - A.J. Rana (1972 (1) SCC 240), had explained the necessity to examine all the documents while considering the case for grant of prosecution. In the above context, the Hon'ble Apex Court held as under :-

"14. The words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect" (vide Shorter Oxford Dictionary). According to Words and Phrases - Permanent Edition Vol. 8-A "to consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.

15. A necessary corollary of what has been observed above is that mind has to be applied with regard to the necessity to obtain and examine all the documents mentioned in the order. An application of the mind with regard to the necessity to obtain and examine only a few of the many documents mentioned in the order, while there has been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. If, however, there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of



the authority concerned regarding the necessity to obtain the documents in question.”
(Emphasis supplied)

40. This Court is not inferring that the sanction for prosecution has been granted without considering the necessary materials or in the absence of necessary materials. The sanction for prosecution, according to the Court, has been granted at such a pace, i.e., in a span of 24 hours, in which haste cannot be definitely ruled out. Haste could also be concomitant to non-application of mind. Application of mind in the grant of sanction is the foremost necessity. However, the speed with which the sanction for prosecution has been granted leaves not only a lot to be said, but equally leaves a bitter taste, however, exercising judicial restraint, this Court restrains itself from elaborating it any further. This Court, on the materials available on record pertaining to sanction of prosecution, is of the considered view that haste rather than prudence has definitely played its part in the accord of sanction for prosecution.

41. 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, the Government Order Nos.802 and 803, which have culminated into the complaints, which have been taken on file in C.C. Nos. 39 and 40 of 2014 on the file of the Principal District & Sessions Judge, Chennai, are devoid of merits and are liable to be quashed.

42. In the result, all the writ petitions are allowed. G.O. Ms. Nos.802 and 803 Public (Law & Order H) Dept., dated 5.9.14 issued by the 2nd respondent are set aside and the complaint in C.C. Nos.39 and 40 of 2014 on the file of the District and Sessions Judge, Chennai, in pursuant to the above Government Orders are quashed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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1. Secretary to Government
Government of India
Ministry of Law and Company Affairs
Shastri Bhavan
New Delhi 110 001.
2. Secretary to Government
Government of Tamil Nadu
Public Department, Fort St. George
Chennai 600 009.
3. The City Public Prosecutor
City Civil Court Buildings
Chennai 600 104.

+1cc to the Government Pleader Sr.9505
+1cc to Mr.S.Elambharathi, Advocate Sr.8531
+2cc to Mr.Prasanth Rajagopal, Advocate Sr.8943, 8944

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