

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.21263 OF 2019

&

CRL.M.P.NOS.11002 & 11003 OF 2019

Mr.E.V.K.S.Elangovan

... Petitioner/Accused

Vs.

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

... Respondent/Complainant

Prayer:

Petition is filed under Section 482 Cr.P.C, praying to quash all the proceedings in C.C.No.37 of 2016 on the file of the II Special Court for trial of Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly at Chennai.

For petitioner : Mr.R.Chellamuthu

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

सतयमेव जयते
O R D E R

This petition has been filed to quash the complaint taken on file by the learned Judge, II Special Court for trial of Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly at Chennai. The Sessions Judge has taken on file the complaint filed by the Public Prosecutor as against the petitioner in C.C.No.37 of 2016 for making alleged imputation as against then Chief Minister of Tamil Nadu.

2. It is the contention of the learned counsel appearing for the petitioner that the alleged statement made by the

applicant noway amounts to defamation as against the then Chief minister affecting the public function. At the most, it amounts only a criticism for which the petitioner cannot be prosecuted under Section 500 of I.P.C. Further, it is also stated that G.O.Ms.No.705, dated 7.8.2012 issued by the Public (Law and Order -H) department according sanction to prosecute the petitioner itself has been quashed by this Court in a batch of writ petitions in W.P.Nos.25377 and 25378 of 2013, etc., dated 21.5.2020. Therefore, the proceedings in C.C.No.53 of 2016 pending on the file of the learned Sessions Judge is liable to be quashed.

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

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

5. On a perusal of the complaint, it is seen that in a press meet the petitioner has stated with regard to abolition of TASMAT and criticized the Government and compared the present Government with Kamraj rule and some statements are said to have been made against Sasikala in the individual capacity. The imputation alleged to have been made by the petitioner in my considered view is a criticism and at no stretch of imagination, amounts to defamation against the then Chief Minister in discharge of her official function and they are only personal in nature.

6. Already, this Court in a batch of writ petition in W.P.No.25377 and 25378 of 2013, etc., dated 21.5.2020, extensively examined and analyzed the scope of Section 199 (2) Code of Criminal Procedure along with Sec.199 (6), Exceptions under Section 499, penal provisions under Sec. 500, 501 and 502 of I.P.C., Procedure for prosecuting the criminal defamation offences prescribed under Section 199 of Cr.P.C., the law of Criminal defamation, Role of the Public Prosecutor and his duties and Duties of the Magistrate/ Sessions Judge while taking cognizance of a private complaint, Freedom of expression, etc. Be that as it may.

7. It is also submitted that to constitute an offence under Section 500 of I.P.C., against the constitutional functionaries

or the Minister of State, it has to be established by the prosecution that the alleged imputation made in respect of the conduct of a public servant/public functionary in discharge of his/her public functions and the public function stands on a different footing than the private activities of a public servant. If the statement is made on mere criticism then it is a right guaranteed under Article 21 of the Constitution of India.

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

9. As already stated supra, the G.O.Ms.No.705, dated 7.8.2012 issued by the Public (Law and Order -H) department according sanction, to prosecute the petitioner and two others itself has been quashed by this Court in a batch of writ petitions in W.P.Nos.25377 and 25378 of 2013, etc., dated 21.5.2020.

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

11. In ASHWINI KUMAR VS. SUBASH GOYAL reported in MANU/PH/190/2013 while dealing with a case of Criminal defamation under section 499 IPC quashed the complaint and held as follows:

“ The attempt to curb the freedom of

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

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

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

"33. Further, the contention urged by the appellants' counsel placing reliance upon the aforesaid judgments that the act of the second respondent allegedly aiding Gujarat Police Officers to facilitate taking Sohrabuddin from Bidar to Ahmedabad, has nothing to do with the discharge of his public functions, hence, the said statement in the news item allegedly defaming the second respondent being telecast and published in electronic and print media does not attract Section 199 CrPC. Therefore, it is contended on behalf of the appellants that the sanction accorded by the State Government

is beyond its jurisdiction as the said act of aiding Gujarat Police is an independent act and it is not in relation to the discharge of public functions of the second respondent though he, at that relevant point of time, was discharging his public functions. This contention on behalf of the appellants is also wholly untenable in law, for the reason that determining the question on whether or not the second respondent while aiding Gujarat Police at that point of time was in the capacity of his official discharge of his public functions or otherwise, is to be determined by regular trial after examining the facts, circumstances and evidence on record.

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

14. Here, in this case, the petitioner is alleged to have stated in the press meet about abolition of TASMAL and criticized the present Government and compared the present Government with Kamraj rule and some statements are said to have been made against Sasikala in her individual capacity. The so called imputation is just like criticism where imputation allegedly put against accused. The imputation alleged to have been made by the petitioner, in my considered view is criticism and at no stretch of imagination, amounts to defamation against the then Chief Minister in discharge of her official function and they are only personal in nature.

15. On a careful perusal of the entire statement, though it appears imputing the former Chief Minister, no way in connection with discharge of her official duties and there is no nexus between such statement and discharge of her official duties and there is no constitutional functions of the State. At the most, the imputation affecting the Chief Minister is against her personal character and the party and not against discharge of her official function. In such view of the matter, the complaint ought to have been filed only under section 199(6) and not under section 199(2) Cr.P.C.

16. To take cognizance of the complaint under Section 199(2) of Cr.P.C., the so called defamation should be directly attributed to a person in discharge of his/her public functions and only in such circumstances, Sub Section 2 of Section 199 of Code of Criminal Procedure will stand attracted. If the said imputation apparently made against the public functionaries, in discharge of his/her public function, have no reasonable nexus

with the discharge of public duties, the remedy available under Section 199(6) of Cr.P.C. before the Magistrate by making private complaint, and remedy under Section 199(2) and 199(4) will not be available. Otherwise, if any criticism or defamation in the nature of personal capacity and such defamation have no nexus with discharge of his/her official function of the State, complaint cannot be made by a Public Prosecutor merely on the basis of Government Order.

17. In view of the foregoing reasons and the decisions cited supra, the G.O.Ms.No.228, dated 01.03.2016 issued by the Public (Law and Order-H) Department, Government of Tamilnadu is quashed and consequently, the complaint in C.C.No.37 of 2016 on the file of the II Special Court for trial of Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamilnadu, Chennai is quashed.

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

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Sessions Judge,
II Special Court for trial of Criminal Cases related
to elected Members of Parliament and Members
of Legislative Assembly of Tamilnadu, Chennai
2. The City Public Prosecutor,
City Civil Court Buildings,
Chennai 600 104.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Chellamuthu, Advocate, S.R.No.41738
+1cc to the Government Pleader, S.R.No.42093

CrI.O.P.No.21263 of 2019

UM(CO)
CS/21/01/2021