



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD).No.13702 of 2017

and

Crl.M.P(MD)Nos.9227 and 9228 of 2017

WEB COPY

1.Theekanal Thiyagu

2.Madurai Alexandar

... Petitioners/Accused Nos.1 & 2

Vs.

The Public Prosecutor,
Madurai District,
O/o.Public Prosecutor,
District Court Buildings,
Madurai.

(Representing on behalf of the
Chief Minister of Tamil Nadu)

... Respondent / Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the complaint in C.C.No.2 of 2016 on the file of the I Additional District Court, Madurai and to quash the same as illegal and pass such any or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioners: Mr.M.A.Palanisamy

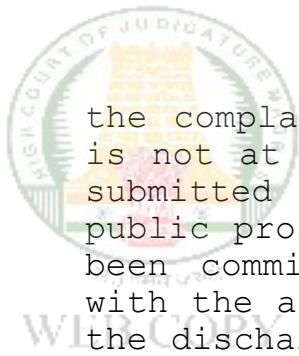
For Respondent : Ms.M.Ananthadevi

Government Advocate (Crl.side)

O R D E R

This petition is filed to quash the proceedings in C.C.No.2 of 2016 on the file of the I Additional District Court, Madurai, as against the petitioners.

2.The learned counsel appearing for the petitioners would submit that the respondent has filed a complaint for the offence punishable under Section 500 IPC alleging that the petitioners had made defamatory speech as against the former Chief Minister of Tamil Nadu. They had mischievous and intentionally spoken to malign the reputation of the former Chief Minister of Tamil Nadu. They also have spoken about her contact in the discharge of her public function. Therefore, they are liable to be punished under Section 500 IPC. He further submitted that the facts narrated in the complaint did not attract any defamatory speech against the former Chief Minister of Tamil Nadu, while she discharging her official duty. The entire averments made in the complaint only indicated about the personal act of the former Chief Minister of Tamil Nadu and other party cadres of Ruling party of Tamil Nadu. Therefore,



the complaint filed under Section 199(2) Cr.P.C. by the respondent is not at all maintainable as against the petitioners. He further submitted that Section 199(2) Cr.P.C. clearly enumerates that the public prosecutor can file complaint in writing, if any offence has been committed against public servant who employed in connection with the affairs of the Union of State in respect of his conduct in the discharge of his public function. He further submitted that the entire allegations made in the complaint against the petitioners that they have made defamatory speech about the public function of the Chief Minister of Tamil Nadu. He further submitted that the present complaint is nothing but political vendetta and abuse of process of law. Hence, he prayed to quash the entire proceedings.

3.In support of his contention he relied upon the order of this Court made in Crl.O.P(MD)No.2454 of 2015, dated 29.10.2018 in the case of Karur Murali Vs. The District Public Prosecutor, Dindigul District.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the petitioners are arrayed as A1 and A2 in the complaint lodged by the respondent in C.C.No.2 of 2016. The petitioners belong to opposite political party and they had a street corner meeting held on 23.06.2015 at Vandiyur in Madurai City within the limits of Anna Nagar Police Station and they have spoken about the former Chief Minister of Tamil Nadu and also criticized her personal character. Therefore, the speeches of the petitioners are not in good faith and made with an intent to tarnish the good image and high esteem of the former Chief Minister of Tamil Nadu. Therefore, it clearly attracted the offence punishable under Section 499 IPC and he prayed to dismissal for the quash petition.

5.Heard Mr.M.A.Palanisamy, learned counsel appearing for the petitioners and Ms.M.Ananthadevi, learned Government Advocate (Crl.Side) appearing for the respondent.

6.The petitioners are arrayed as A1 and A2 in the complaint lodged by the respondent herein for the offence punishable under Section 499 and 500 IPC. The learned counsel for the petitioners would submit that the complaint lodged by the respondent under Section 199 (2) Cr.P.C. is not at all maintainable on the ground that the entire averments in the complaint only indicate about the personal act of the former Chief Minister of Tamil Nadu and not about the discharge of her public function.

7.In this regard it is relevant to extract provision under Section 199(2) Cr.P.C. as follows:

''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''.

8.It enumerates that the public prosecutor can file a complaint in writing, if any offence has been committed against the public servant, who employed in connection with the affairs of the Union or State in respect of his conduct in the discharge of public function. The reading of the impugned complaint indicates that the petitioners have never made defamatory speech about the public function of the former Chief Minister of Tamil Nadu. It would also reveal that the petitioners never defame the former Chief Minister of Tamil Nadu personally there is no words to pertain to her public function.

9.The learned counsel for the petitioners relied upon the judgment made in Crl.O.P(MD)No.2454 of 2015, dated 29.10.2018 Karur Murali Vs. The District Public Prosecutor, Dindigul District which is held as follows:

''7.On perusal of the complaint filed by the respondent, it would reveals that the petitioner herein defamed the Hon'ble Chief Minister of Tamil Nadu personally and there is no words pertained to her public function. In this regard, the constitutional Bench of Hon'ble Supreme Court of India held in the judgment reported in **CDJ 2018 SC 391** in the case of **K.K.Mishra Vs. The State of Madhya Pradesh & another**. The relevant portions of the judgment which reads as under:

"7. Section 199 (2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the concerned functionary or public servant, as may be. The prosecution under Section 199 (2) Cr.P.C is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the Competent



Authority in the State/Central Government under Section 199 (4) Cr.P.C of the code. Such a complaint is required to be filed in a Court of Sessions that is alone vested with the jurisdiction to hear and try the alleged offence and even without the case being committed to the said court by a subordinate Court. Section 199(2)Cr.P.C. read with section 199(4)Cr.P.C., therefore, envisages a departure from the normal rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in sub-section (2) of Section 199 Cr.P.C. by sub-section (6) thereof.

8. The rationale for the departure from the normal rule has been elaborately dealt with by this Court in a judgment of considerable vintage in P.C. Joshi and another vs. The State of Uttar Pradesh¹ [paragraph 9]. The core reason which this Court held to be the rationale for the special procedure engrafted by Section 199(2) Cr.P.C. is that the offence of defamation committed against the functionaries mentioned therein is really an offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special procedure.

P.C. Joshi (supra), however, specifically dealt with the provisions of Section 198 B of the Code of Criminal Procedure, 1898 ("old Code") which are *pari materia* with the provisions of Section 199 of the Cr.P.C. ("new Code").

9. The above would require the Court to consider as to whether the statements made by the accused appellant in the Press Conference which have been taken note of in the order dated 24th June, 2014 granting sanction/ permission can legitimately be said to be attributable or connected with the discharge of public functions of the office of the Hon'ble Chief Minister. In other words, whether the said statements have any reasonable nexus with the discharge of Official duties by the Hon'ble Chief Minister.

10. The problem of identification and correlation of the acts referred to in an allegedly defamatory statement and those connected with the discharge of public functions/official duties by the holder of the public office is, by no means, an easy task. The sanction contemplated under Section 199(4)



Cr.P.C. though in the opposite context i.e. to prosecute an offender for offences committed against a public servant may have to be understood by reference to the sanction contemplated by Section 197 Cr.P.C. which deals with sanction for prosecution of a public servant. There is a fair amount of similarity between the conditions precedent necessary for accord of sanction in both cases though the context may be different, indeed, the opposite. While dealing with the requirement of sanction under Section 197 Cr.P.C. this Court in *Urmila Devi vs. Yudhvir Singh* (2013) 15 SCC 624 had taken the following view which may have some relevance to the present case.

"59. The expression "official duty" would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 CrPC may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code."

11. If the allegedly defamatory statements, already extracted, in respect of which sanction has been accorded to the Public Prosecutor to file the complaint against the appellant under Section 199 (2) Cr.P.C. by the order dated 24th June, 2014 are to be carefully looked into, according to us, none of the said statements, even if admitted to have been made by the appellant, can be said to have any reasonable connection with the discharge of public duties by or the office of the Hon'ble Chief Minister. The appointment of persons from the area/place to which the wife of the Hon'ble Chief Minister belongs and the making of phone calls by the relatives of the Hon'ble



Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon'ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Section 199(2) and Cr.P.C. will not be available. It is the remedy saved by the provisions of sub-section (6) of Section 199 Cr.P.C. i.e. a complaint by the Hon'ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to.

10. In view of the above ratio relied by the Hon'ble Supreme Court of India, the complaint is filed by the respondent herein that the petitioner made a defamatory speech in public function about the former Chief Minister of Tamil Nadu. Whereas it is seen from the complaint, the petitioners never made any defame speech about the former Chief Minister of Tamil Nadu pertaining to her public function. The speech made by the petitioners would reveal that they never defamed the former Chief Minister of Tamil Nadu personally. Therefore, the complaint filed under Section 199(2) Cr.P.C. by the respondent against the petitioners cannot be sustained and it is nothing but clear abuse of process of law.

11. In view of the above discussions, this Criminal Original Petition is allowed and the complaint in C.C.No.2 of 2016 on the file of the I Additional District Court, Madurai is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

vsd
To

1. The I Additional District Court,
Madurai.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) .No.13702 of 2017 and
Crl.M.P (MD) Nos.9227 and 9228 of 2017
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ES (CO)

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