



WEB COPY



Crl.O.P.No.21081 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2020
PRONOUNCED ON : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21081 of 2015 and
Crl.M.P.Nos.1 of 2015 & 4752 of 2021

1.Thiru.Amirthan,
Managing Director and News Editor,
Kalaighar T.V,
367/369, Anna Salai, Subbarayan Nagar,
Teynampet, Chennai – 600 018.

2.Thiru.Kumayun,
Chief Executive Officer,
Kalaighar T.V,
367/369, Anna Salai, Subbarayan Nagar,
Teynampet, Chennai – 600 018.

3.Thiru.Doyal,
Chief News Editor,
Kalaighar T.V,
367/369, Anna Salai, Subbarayan Nagar,
Teynampet, Chennai – 600 018.

... Petitioners

Vs.

City Public Prosecutor,
High Court Campus,
Chennai – 600 104.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with C.C.No.22 of 2015 on the file of the learned Principal Sessions Judge, Chennai and quash the same.



Crl.O.P.No.21081 of 2015

For Petitioners : Mr.S.Manuraj
For Respondent : Mr.Hasan Mohamed Jinnah,
State Public Prosecutor assisted by
Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.22 of 2015, pending on the file of the Principal Sessions Court, Chennai/trial Court.

2.The petitioners/A2 to A4, who are facing trial in C.C.No.22 of 2015, for offence under Sections 499 and 500 IPC, have filed this quash petition.

3.The contention of the petitioners is that the ingredients to attract prosecution under Section 499 IPC is not present if taken the complaint as a whole. The sanction accorded by the prosecution under Section 199(4) of Cr.P.C., is not proper. The G.O.Ms.No.835, Public (Law and Order-H) Department, dated 03.07.2015, is passed mechanically, without application of mind and it is bad in law. The text of imputation found in the above said Government Order if read on a whole, will not amount to any defamatory



statement.

WEB COPY

4.Further contention is that the respondent/the City Public Prosecutor has not satisfied as to how sanction for prosecution accorded when the imputation does not pertain to discharge of the official functioning of the then Highways and Minor Ports and Forest Minister Edappadi K.Palanisamy. He further submitted that the respondent is never to be a post man and his office is not the Post office to merely lay a complaint without examining the evidence and material on record. The respondent has not verified whether the requirement of law under Section 199(2) of Cr.P.C., is made out. The trial Court had not independently gone into the materials produced and merely taken the complaint on file. In view of such fundamental defects, the prosecution cannot be proceeded against the petitioners. Further, in the complaint, it is nowhere stated that due to the imputation caused by the petitioners directly or indirectly lowered the moral or intellect character of the Minister in estimation of others. The interview was made in good faith and not to defame the intellectual character of any Minister.



5.He further submitted that from the year 2015, the case before the trial court has been pending, without any progress. The petitioners are the Managing Director/New Editor, Chief Executive Officer and Chief News Editor of Kalaighnar Television, Teynampet, Chennai and they hail from respectable family with legacy. Dissemination of information to the general public is a duty of the press and the petitioners have no intention to defame the said Minister as alleged by the respondent.

6.The learned State Public Prosecutor submitted that on receipt of the G.O.Ms.No.835, Public (Law and Order-H) Department, dated 03.07.2015, the respondent filed a complaint against the petitioners for offence under Sections 499 and 500 IPC invoking Section 199(2) of Cr.P.C. The petitioners have not denied the interview telecasted by them in Kalaighnar Television on 07.04.2015 and 08.04.2015. In the interview, A1 had specifically named Edappadi K.Palanisamy, Minister and Thoppu Venkatachalam, Minister are indulging in corrupt practice on a daily basis and further, the said Edappadi K.Palanisamy is acting as a “Kuruvi”. The transcribed defamatory portion of the interview is produced in the complaint. The petitioners without verifying the speech made by A1 telecasted the same in Kalaighnar Television. Thus, the



Crl.O.P.No.21081 of 2015

interview impeaches the reputation of the said Ministers.

WEB COPY

7.He further submitted that the Government had issued the G.O.Ms.No.518, Public (Law and Order-H) Department, dated 10.08.2021, on the recommendation of the Advocate General and Public Prosecutor, High Court of Madras and they have opined that the defamation cases may be withdrawn as per Section 321 of Cr.P.C.

8.Considering the rival submission and on perusal of the materials, it is seen that though the Government has passed the G.O.Ms.No.518, Public (Law and Order-H) Department, dated 10.08.2021 for withdrawal of the case, the Hon'ble Apex Court on 10.08.2021, in the case of "***Ashwini Kumar Upadhyay Vs. Union of India and another*** in ***W.P.(C).No.699 of 2016***", has issued certain guidelines to check the misuse of prosecutor's power in withdrawing cases under Section 321 Cr.P.C. Further, the power under Section 321 Cr.P.C., is required to be utilized with utmost good faith to serve the larger public interest and it cannot be used for extraneous and political considerations. The nature and gravity of the offence, its impact upon public life especially where the matters involved public funds and the discharge of a public trust is to be



seen. In the case of the sitting former MPs and MLAs, directions has been issued that no prosecution case shall be withdrawn without the lieu of the High Court.

9.From the perusal of the materials, it is seen that in the case of ***“K.K.Mishra Vs. The State of Madhya Pradesh and Another*** reported in ***CDJ 2019 SC 391***”, the Hon'ble Apex Court had drawn the guidelines with regard to Section 199(2) Cr.P.C., which provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants. It would be beneficial to extract the paragraph Nos.7 and 8 of the above said Judgment:-

“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) of the Code. Such a



WEB COPY

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.

1 AIR 1961 SC 387 P.C. Joshi (supra), however, specifically dealt with the provisions of Section 198B of the Code of



Crl.O.P.No.21081 of 2015

WEB COPY

Criminal Procedure, 1898 (“old Code”) which are pari materia with the provisions of Section 199 of the Cr.P.C. (“new Code”).

10.It is clearly stated that the offence of defamation committed attracting Section 199(2) Cr.P.C., against the functionaries mentioned therein is to be seen, whether an offence committed is against the State, and 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.

11.On perusal of the G.O. and the complaint, it is seen that no such imputation made in discharge of public function of the Ministers is found. The decision of the Apex Court in the case of **K.K.Mishra** (cited supra) is consistently followed by this Court in the case of “**Karur Murali Vs. Public Prosecutor, Tirunelveli in Crl.O.P.(MD).No.17415 of 2018, Crl.O.P.No.2453 of 2015 and Crl.O.P.No.23619 of 2018.**”

12.The petitioners have allegiance towards the opposition party and some political statements have been made. The allegations made in the complaint are personal in nature and no way pertain to the public functioning



Crl.O.P.No.21081 of 2015

of the Hon'ble Minister. In view of the same, the complaint filed before the trial Court is liable to be quashed.

13. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.22 of 2015, on the file of the Principal Sessions Judge, Chennai is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

30.11.2021

Index : Yes/No

Internet : Yes/No

To

1. The Special Court No.I of the trial for Criminal Cases
related to Elected Member of Parliament and
Members of Legislative Assembly of Tamil Nadu, Singaravellar Maligai,
Chennai.
2. The City Public Prosecutor,
High Court Campus,
Chennai – 600 104.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.21081 of 2015

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER IN
Crl.O.P.No.21081 of 2015

30.11.2021