



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2020

PRONOUNCED ON : 11.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.5164 of 2021 and
CrI.M.P.Nos.3309 & 3311 of 2021

Dayanidhi Maran,
Member of Parliament,
Dravida Munnetra Kazhagam,
No.4, Second Avenue,
Boat Club Road, R.A.Puram,
Chennai-600 028.

... Petitioner/Accused

Vs.

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

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.36 of 2020 on the file of the Special Court to try offences against MP & MLA, Chennai and quash the same and allow this Criminal Original Petition.

For Petitioner : Ms.M.Sneha

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.36 of 2020, on the file of 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 learned counsel for the petitioner submitted that the petitioner is the Member of Parliament, Dravida Munnetra Kazhagam, who made public speech in the inaugural function of newly constructed MLA Office near E.V.R. Road on 30.01.2020. During the speech, he made references with regard to the irregularities in functioning of TNPSC, at the instance of the then Minister and compared the TNPSC scam with Vyapam scam and demanded CBI enquiry. This cannot termed as defamatory statement. The TNPSC was constituted for the sole purpose of creating and nurturing a public service and the selection process to be done in independent, impartial and ethical manner with transparency gaining public confidence.

3.The sanction accorded by the Government is nothing but malafide and with ulterior reason, without application of mind. The complaint on file is an attempt to interfere with the fundamental rights of the petitioner under Article 19(1)(a) and Article 21 of the Constitution of India and taking cognizance of the complaint is nothing but interference, with the freedom of speech, which is one of the most valuable rights guaranteed to the citizen in a democratic state.

4.He further submitted that in G.O.Ms.No.125, dated 14.02.2020, the transcribed imputation reproduced. On going through the same, nowhere the petitioner had stated anything against the then Chief Minister or any other Ministers in particular. In fact in the inaugural function, the petitioner not even mentioned the then Chief Minister's name or any Ministers name. He further submitted that in the complaint, there is no mention about the former Minister. The petitioner did not have any intention to harm any Minister's reputation directly or indirectly and the speech was made in good faith and not to defame the intellectual character of any Minister.

5.He further submitted that from the year 2020, the case before the trial court is kept idle without any progress. The petitioner is a former Minister in the Union Cabinet and he hails from a respectable family with legacy. He is a political personality, made certain comments and informed the public and others the sorry State of affairs, which is part of democracy process, which cannot be termed as defamatory.

6.The learned State Public Prosecutor submitted that on receipt of the G.O.Ms.No.125, dated 14.02.2020, the respondent City Public Prosecutor filed a complaint invoking Section 199(2) of Cr.P.C. The petitioner not denied addressing in the inaugural function held on 30.01.2020, which was telecasted and widely publicized in the social media. In the inaugural function, the petitioner specifically made serious imputations



against TNPSC. The transcribed defamatory portion of the press meet is produced in the complaint.

7. He further submitted that the Government had issued the G.O.Ms.No.571, 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.571, dated 10.08.2021, for withdrawal of the case, in view of the orders passed by 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", wherein certain guidelines issued 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 and its impact upon public life especially where the matters involve public funds and the discharge of a public trust to be seen. In the case of the sitting, former MPs and MLAs, directions 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 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



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State/Central Government under Section 199 (4) 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.

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

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, where 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 Government Order and the complaint, it is seen that no such imputation made in discharge of public function of the Minister is found. The decision of the Hon'ble 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 CrI.O.P.(MD).No.17415 of 2018, CrI.O.P.No.2453 of 2015 and CrI.O.P.No.23619 of 2018."



12.The petitioner belongs to the opposition party at the time of occurrence and some political statements have been made. The allegations made in the complaint are general in nature and no way pertains to the public functioning of the Minister. In view of the same, the complaint filed by the respondent before the trial Court is liable to be quashed.

13.Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.36 of 2020, on the file of 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 is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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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.

Cr1.O.P.No.5164 of 2021

SJ (CO)
K.RK. (22.11.2021)