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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 08.10.2021

PRONOUNCED ON : 08.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.20480 OF 2019

AND

CRL.MP.NO.10528 OF 2019

Thiru.E.V.K.S.Elangovan,
No.2B/514, River View Colony,
Arcot Road,
Manapakkam,
Chennai - 600 125.

...Petitioner

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 C.C.No.3 of 2013 pending on the file of the II Special Court for trial of Criminal Cases related to Elected MPs and MLAs at Chennai and quash the same.

For Petitioner : Mr.B.Balaji for Mr.R.Chellamuthu

For Respondent : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
Assisted by Mr.A.Damodaran,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.3 of 2013 pending on the file of the II Special Court for trial of Criminal Cases related to Elected MPs and MLAs at Chennai and quash the same.

2.The petitioner is an accused in C.C.No.3 of 2013, facing trial for the offence under Section 499 and punishable under Section 500 IPC has filed this quash petition.



3.The contention of the petitioner is that the ingredients to attract prosecution under Section 499 IPC is not present if the complaint taken as a whole. The sanction accorded under Section 199(4) of Cr.P.C. In G.O.Ms.No.988, Public (L&O-H) Department, dated 26.11.2012, passed mechanically, without application of mind and it is bad in law. The text of imputation found in the above said G.O., if read as a whole, does not amount to any defamatory statement.

4.The respondent i.e. The City Public Prosecutor not satisfied how he is accorded sanction to prosecute when the imputation does not pertain to discharge of the official functioning of the then Chief Minister. The allegation made against the petitioner was that the petitioner made false and malicious statement, defaming then Chief Minister on 23.11.2012 in panel discussion under the caption "Nerpada Pesu" broadcasted between 21.00 and 22.00 hours in "Puthiya Thalaimurai" TV Channel, wherein D.Pandiyan Avadi Kumar, G.C.Sekhar along with the petitioner participated. The former Chief Minister supported one Udayakumar in the agitation against Kudankulam Power Plant and only because of that no electricity generated from Kudankulam Power Plant till date and the protest lasted over 1 ½ years, in spite of funds for infrastructure work being disposed by the Central Government, the State Government is demanding commission of 12% for executing the infrastructure works. Since no percentage could be received in Central Government Schemes such schemes are kept idle by the State Government.

5.He further submitted that the Public Prosecutor merely laid a complaint, without examining the materials on record, get satisfied the requirement of law under Section 199(2) of Cr.P.C. The Lower Court had not perused the materials produced, independently examined the same, thereafter taken the case on file. The cognizance order is mechanical and without any reason. In view of such fundamental defect, the prosecution cannot proceed. Further in the complaint, it is no where stated, that due to the imputation caused by the petitioner and the said Minister's reputation is directly or indirectly lowered the moral or intellect character of the then Chief Minister in estimation of others, the same was made in good faith to weed out corruption and not to defame. The petitioner exercised his fundamental right as a citizen of the country and as responsible political leader.

6.He further submitted that from the year 2012, the case before the lower court is kept idle without any progress. The petitioner is a former Minister of State in Government of India, he hails from a respectable family with legacy. He is a political personality made certain comments alerted the public



and others to be aware of the corrupt practice adopted by the then Chief Minister, which is part of democratic process, which cannot be termed as defamatory.

7.The learned State Public Prosecutor submitted that on receipt of the G.O.Ms.No.988, dated 26.11.2012, the respondent, City Public Prosecutor filed a complaint invoking Section 199 (2) of Cr.P.C. for offence under Sections 499 and 500 IPC. The petitioner has not denied the panel discussion attended by him in the Puthiya Thalaimurai TV on 23.11.2012, which was telecasted and publicized. The transcribed defamatory portion of the panel discussion is produced in the complaint. The complaint lodged against the petitioner. He further submitted that the Government had issued the G.O.Ms.No.553, 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.553, dated 10.08.2021, for withdrawal of the case, in view of the orders passed by the 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 to withdraw 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 on public life especially where the matters involve public funds and the discharge of a public trust involved 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 Apex Court had drawn the guidelines with regard to the 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.

10.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



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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 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")."

11. It is clearly stated that the offence of defamation committed under 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.

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12. On perusal of the G.O. and the complaint, it is seen that no such imputation made in discharge of public function of the former Chief Minister. 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.

13. The petitioner belongs to the opposition party and some political statements have been made. The allegations made in the complaint are political in nature and not on personal level and no way pertain to the public functioning of the Hon'ble Chief Minister. In view of the same, this Criminal Original Petition is liable to be allowed.

14. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.3 of 2013, is hereby quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

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

2. The Principal Sessions Judge,
II Special Court for trial of Criminal Cases
related to Elected MPs and MLAs,
Chennai.

+1cc to M/s.R.Chellamuthu, Advocate, S.R.No.57498

Crl.O.P.No.20480 of 2019

CP(CO)
RVM(26/11/2021)