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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NO. 12000 OF 2017

AND

CRL.M.P.NOS.7869 & 7870 OF 2017

Ananda Sam Sankar,
S/o. Duraipandian

... Petitioner

Versus

1. State represented by
Inspector of Police,
Grand Bazaar Police Station,
Puducherry.
(Crime No.231 of 2015)

2. Dr.K.V.Raman,
S/o. Venkatesheiaiah,
Director of Directorate of Health and
Family Service,
Government of Puducherry,
Puducherry.

... Respondents

PRAYER :

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the final report in S.C.No.20 of 2017 on the file of the Court of the Assistant Sessions Judge cum Chief Judicial Magistrate Court, Puducherry and quash the same and all further proceedings pursuant thereto.

For Petitioner : Mr.T.Saikrishnan

For Respondent : Mr.V.Balamurugane,
Addl. Public Prosecutor (Pondy.)

O R D E R

This Criminal Original Petition has been filed to quash the final report filed in S.C. No.20 of 2017 on the file of Assistant Sessions Judge cum Chief Judicial Magistrate Court,



Puducherry for the offence under Sec.124-A I.P.C. against the petitioner.

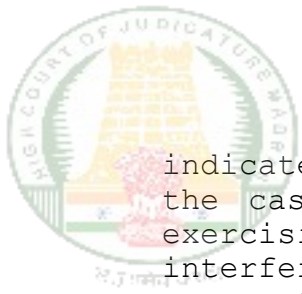
2. It is the case of prosecution that the petitioner is an editor of Weekly Tamil News Magazine "Namadhu Manasatchi" and they have printed and published a news article captioned "காலாவதி" with pictures such as OPD. Slip No.OP-15-0499575, Dated 19.10.2015 relate to Baby Vishalini, aged 4 years at Puducherry issued at the Indira Gandhi Government General Hospital and Post-Graduate Institute, Puducherry and the medical syrup bottle with label carrying details that "manufacturing date as March 2015" and the "expiry date as August 2016"(it is seen from the label showing that the medicine has been prescribed to the patient well within the expiry date of the medicine) and also has falsely published that expired medicines are given to patients in the Indira Gandhi Government General Hospital, Puducherry. Thus, the accused had excited hatred, contempt and disaffection towards the Government, created a fear in the minds of the public, damaged the image of the Government as well as the medical profession and tarnished the image of the medical service to the public by the Government, also created ill-feeling and enmity between the medical profession and the public and also caused annoyance to the public, thereby rendered himself liable to be punished under Sec.124-A I.P.C.

3. Mr.T.Saikrishnan, learned counsel appearing for petitioner would contend that the prosecution is nothing, but abuse of process of law. He would submit that the petitioner had published a news citing that expired medicines are given to a patient in a Government Hospital, which does not amount to exciting hatred, contempt and disaffection towards the Government. What has been published is expressing as to the measures of the Government with a view to obtain their alteration by lawful means. Hence, such publication never amounts to exciting hatred, contempt or disaffection towards the Government. Therefore, he prayed that as the prosecution is nothing, but abuse of process of law, the final report is to be quashed.

4. Mr. V.Balamurugane, learned Addl. Public Prosecutor (Pondy.) appearing for respondent would submit that the accused has falsely published a news item as if expired medicines prescribed to the patients in the Government Hospital, which has excited hatred towards the Government. Therefore, he opposed to quash the final report.

5. Heard both learned counsel appearing for petitioner as well as respondent and perused the records.

6. Normally, when the materials collected by the prosecution



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indicates that there are prima facie materials to proceed with the case for trial against the accused and this Court, which exercising its jurisdiction under Sec.482 of Cr.P.C. would not interfere with final report, but, at the same time, when the prosecution itself is not maintainable in the eye of law. Hence, this Court can very well interfere with under Sec.482 of Cr.P.C. The only allegation made against the petitioner is that he has published an article in a magazine citing that some expired medicines prescribed to one of a child in the Government Hospital. On perusal of magazine, this Court is of the view that what has been published is only a statement to the effect citing that some expired medicines prescribed in the Government Hospital and it has been brought to the notice of the Government. It is relevant to note that any comments expressing disapprobation and measures of the Government with a view to obtain their alteration by lawful means without exciting hatred, contempt or disaffection towards the Government would not constitute an offence under Sec.124-A I.P.C. Similarly, any comments expressing the disapprobation on the actions of the Government without exciting hatred or contempt or attempts to excite disaffection towards the Government do not constitute an offence under Sec.124-A I.P.C. The above two scenarios falls within the Explanation 2 and 3 of Sec.124-A of I.P.C. Except contending that a news item is published to the effect citing that expired medicines prescribed in the Government Hospital, this Court is not able to find any other materials to indicate that such publication has been in fact excited hatred or contempt or disaffection towards the Government. In this regard, Hon'ble Apex Court in the case of Kedar Nath Singh vs. State of Bihar reported in 1962 Supp (2) SCR 769 in para 26 has held as follows :-

"26.....As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however, strongly worded, would be within reasonable limits and would be consistent with the fundamental right or freedom of speech and expression. It is only when the words, written or spoken etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps into prevent such activities in the interest of public order....."

Further, the Hon'ble Apex Court in the case of Vinod Dua vs. Union of India and others reported in 2021 SCC Online SC 414 in para 56 has culled out the statement of law deducible from the decision in Kedar Nath Singh as follows :-



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"56. These passages elucidate what was accepted by this Court in preference to the decision of the Privy Council in Balagangahar Tilak and in King Emperor vs. Sadashiv Narayan Bhalerao. The statements of law deducible from the decision in Kedar Nath Singh are as follows :-

a) "the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted."

b) "any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence."

c) "comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal.

d) "A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder."

e) "The provisions of Sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence."

f) "It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps into prevent such activities in the interest of public order."



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g) "We propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace."

Applying the above dictums, when mere criticism of public measures or comments on the Government's action or action of any authorities, though it may be strongly worded, such criticism cannot be construed as an offence, unless there are materials to show that such criticism had impacted against the Government. In such view of the matter, I do not find any merit in the prosecution and accordingly, this Court is inclined to quash the final report in S.C.No.20 of 2017, on the file of Assistant Sessions Judge cum Chief Judicial Magistrate, Puducherry. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Assistant Sessions Judge cum
Chief Judicial Magistrate Court,
Puducherry.
2. Inspector of Police,
Grand Bazaar Police Station,
Puducherry.
3. Director of Directorate of Health and
Family Service,
Government of Puducherry,
Puducherry.



4. The Public Prosecutor,
High Court,
Madras.

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+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.66393

CrI. O.P. No. 12000 of 2017
and
CrI.M.P.Nos.7869 & 7870
of 2017

SMI (CO)
PM/04/01/2022