

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.24921 of 2019
and
CrI.M.P.No.13309 of 2019

T.T.V.Dhinakaran

... Petitioner

Vs.

City Public Prosecutor
High Court Campus
Chennai - 600 104.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the complaint in C.C.No.1 of 2018 on the file of the Special Court No.II of Trial for Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.

For Petitioner	: Mr.P.S.Raman Senior Counsel for Mr.N.Raja Senthoo Pandian
For Respondent	: Mr.A.Natarajan, State Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1 of 2018 pending on the file of the Special Court No.II of Trial for Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.

2. The case of the prosecution is that on 27.02.2018, in an interview, the petitioner has given a defamatory statement against the Hon'ble Chief Minister and Ministers of Government of Tamil Nadu, which was telecasted in leading Television Channels, like Jaya TV and Polimer TV and the same has come in leading dailies on the subsequent day i.e., on 28.02.2018. Hence, the respondent/complainant has given a complaint under Section 199(2) of Cr.P.C. against the petitioner for the alleged offence under Section 499 of IPC, which is punishable under Section 500 IPC. The said complaint is pending on the file of the Special Court No.II of Trial for Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, in C.C.No.1 of 2018. Hence, the petitioner came forward to file this Criminal Original Petition to quash the same.

3. It is the contention of the learned Senior Counsel appearing for the petitioner that the alleged statement noway amounts to defamation as against the Hon'ble Chief Minister and Ministers, Government of Tamil Nadu. He further submits that the alleged statement made by the petitioner was pertaining to the erection of statue of the former Hon'ble Chief Minister Selvi J.Jayalalitha, which was organised by the ADMK Political Pary. Thus, the participation of Hon'ble Chief Minsiter or Ministers in respect of the said event could not be termed as discharge of their public duties. Therefore, the proceedings in C.C.No.1 of 2018 pending on the file of the Special Court No.II of Trial for Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, is liable to be quashed.

4. The learned State Public Prosecutor appearing for the respondent submitted that whether the statement is one of the defamative imputation caused damage to the public authorities or State is a matter of trial, cannot be decided at this stage in a quash petition. Hence, prays for dismissal of this Criminal Original Petition.

5. Heard the learned counsel appearing for the petitioner and the Public Prosecutor appearing for the respondent and perused the materials available on record.

6. On a perusal of the entire complaint, it is seen that the imputation alleged to have made by the petitioner, in my considered view, is only an allegation made against the Ministers in general and no way connected with the discharge of their official functions.

7. It is well settled Law that the power of quashing of a criminal proceedings should be exercised sparingly, with circumspection and in rarest of rare cases. The court, is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint on the basis of the evidence collected during investigation.

8. The Hon'ble Supreme Court in the case of State of Haryana and others vs. Bhajan Lal and others reported in 1992 Supp (1) SCC 335, has held as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercising of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. Similarly, it is also well settled that while exercising the power under Section 482 Cr.P.C., the Court is not expected to express any views on merits related to the realm of appreciation of evidence to decide the credibility of the case put forward.

10. When the allegations in the FIR and the materials collected by the prosecution does not disclose the commission of any offence and make out a case against the accused and the prosecution itself is instituted with an ulterior motive for wreaking vengeance, this Court can exercise power under Section 482 Cr.P.C.

11. Already, this Court in a batch of writ petition in W.P.No.25377 and 25378 of 2013, etc., dated 21.5.2020, extensively examined and analyzed the scope of Section 199 (2) Code of Criminal Procedure along with Sec.199 (6), Exceptions under Section 499, penal provisions under Sec. 500, 501 and 502 of I.P.C., Procedure for prosecuting the criminal defamation offences prescribed under Section 199 of Cr.P.C., the law of Criminal defamation, Role of the Public Prosecutor and his duties and Duties of the Magistrate/ Sessions Judge while taking cognizance of a private complaint, Freedom of expression, etc. Be that as it may.

12. It is also submitted that to constitute an offence under Section 500 of I.P.C., against the constitutional functionaries or the Minister of State, it has to be established by the prosecution that the alleged imputation made in respect of the conduct of a public servant/public functionary in discharge of his/her public functions and the public function stands on a different footing than the private activities of a public servant. If the statement is made on mere criticism then it is a right guaranteed under Article 21 of the Constitution of India.

13. It is also to be noted that in a catena of judgments reported in [(2015)8 SCC 239 RAJDEEP SARDESAI VS. STATE OF ANDHRA PRADESH AND OTHERS] and [1993 Supp (1) SCC 499], the Apex Court held that judicial process should not be an instrument of oppression or needless harassment. In PEPSI FOODS LIMITED VS. SPECIAL JUDICIAL MAGISTRATE reported in (1998) 5 SCC 749, the Hon'ble Supreme Court has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. The so called imputation allegedly made should have reasonable nexus with discharge of public duties. Therefore, mere an allegation made against the Ministers in general without any intent on the part of the petitioner and/or without any nexus with discharge of public duties will not come under the purview of offence punishable under Sec.500 of I.P.C.

14. In a judgment reported in (2018)6 SCC 676 [K.K.MISHRA VS. THE STATE OF MADHYA PADESH AND OTHERS] the Apex Court held that the alleged statements have no reasonable nexus with the discharge of public duties by or office of the Chief Minister. Such statements may be defamatory but in absence of a nexus between the same and the discharge of public duties or office of the Chief Minister, remedy under section 199(2) and 199(4)

Cr.P.C. will not be available. It is the remedy saved by the provisions of subsection (6) of section 199 Cr.P.C. i.e. a complaint by the Chief minister before the ordinary court i.e. the court of a Magistrate which would be available and could have been resorted to.

15. In ASHWINI KUMAR VS. SUBASH GOYAL reported in MANU/PH/1170/2013 while dealing with a case of Criminal defamation under section 499 IPC quashed the complaint and held as follows:

" The attempt to curb the freedom of speech, the freedom of press and the power of the pen therefore, needs to be discouraged and rather, complaints such as these ordinarily should be viewed as attempts of a prudish mind of the complainant's orchestrator showing complete subversiveness and servility of character, and displaying an aversion to criticism over preference to a parroted existence.(Para 19)."

16. Similarly in KARTAR SINGH VS. STATE OF PUNJAB reported in A.I.R. 1956 SC 541, wherein the Apex Court held that vulgar abuses made against the Transport Minister and the Chief Minister will not amount to defamation of the State but may amount only to the defamation of the public functionaries concerned and therefore, they are only personal in nature. The facts of that case are that the accused was charged under section 9 of the Punjab security of the State Act, 1953 for making vulgar abuses against the Transport Minister and the Chief Minister. The Hon'ble Supreme Court even though finding that the accused statements amounted to defamation against the Transport Minister and the Chief Minister however held that the vulgar abuses do not undermine the security of the state or friendly relations with foreign states nor did they amount to contempt of court or defamation prejudicial to overthrow the state. The Apex court held that the slogans were certainly defamatory of the Transport Minister and the Chief Minister, but the redress of that grievance was personal to these individuals and the state authorities could not take the cudgels on their behalf.

17. To take cognizance of the complaint under Section 199 (2) of Cr.P.C., the so called defamation should be directly attributed to a person in discharge of his/her public functions and only in such circumstances, Sub Section 2 of Section 199 of Code of Criminal Procedure will stand attracted. If the said imputation apparently made against the public functionaries, in discharge of his/her public function, have no reasonable nexus with the discharge of public duties, the remedy available under Section 199(6) of Cr.P.C. before the Magistrate by making private complaint, and remedy under Section 199(2) and 199(4) will not be available. Otherwise, if any criticism or defamation in the nature of personal capacity and such defamation have no

nexus with discharge of his/her official function of the State, complaint cannot be made by a Public Prosecutor merely on the basis of Government Order.

18. In view of the foregoing reasons and the decisions cited supra, the complaint in C.C.No.1 of 2018 pending on the file of the Special Court No.II of Trial for Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, is liable to be quashed.

19. In the result, Criminal Original petition is allowed and the complaint in C.C.No.1 of 2018 pending on the file of the Special Court No.II of Trial for Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

20. Before parting, though the complaint has been quashed on the basis of well settled position of law, it is also to be recorded that persons in public life and the leaders of various political parties should restrain themselves from making serious allegations or criticism against the constitutional functionaries, since leaders of political parties have huge followers and the same will have serious impact on the followers also and the followers also blindly follow the path of their leaders. Merely because one has right of freedom of speech they cannot make any such allegation though it may not attract penal consequences or may not amounts to criminal defamation. Using scurrilous allegations, using harsh words, which is in the nature of serious criticism against particular individual also to be avoided. Therefore, this Court is of the view that irrespective of the political affiliation, when a person raised to the level of leader of a political party should show utmost respect to the others in public life. Of course, every citizen of a democratic country have a freedom of speech, but at the same time such criticism should not exceed affecting the sentiments of others also. The leaders of political parties should show their statesmanship and quality and healthy politics rather than accusing others by using vituperated language in political platform.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge, Court No.II of Trial
for Criminal Cases related to elected Members
of Parliament and Members of Legislative Assembly
of Tamil Nadu, Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai.

+3CCs to Mr.N.Raja Senthoo Pandian, Advocate, S.R.No.14457.

Crl.O.P.No.24921 of 2019
and
Crl.M.P.No.13309 of 2019

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CSR 24/03/2021