



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.07.2021

PRONOUNCED ON : 09.09.2021

CORAM :

THE HONOURABLE **Mr.JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.8423 of 2021 and

Crl.MP(MD) No.4327 of 2021

G.Nibandhan

... Petitioner/Sole Accused

Vs.

1.The State Represented by
The Inspector of Police,
Devadanapatti Police Station,
Theni District.
(Crime No.1456 of 2020)

... Respondent/Complainant

2.Manikandan

... Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the impugned charge sheet in CC No.65 of 2021 on the file of the learned Judicial Magistrate, Periyakulam and quash the same as illegal.

For Petitioners
For R1

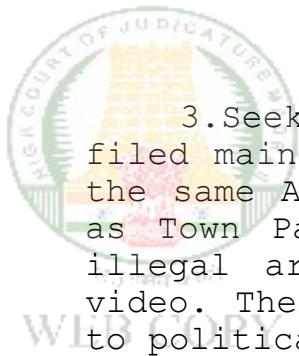
: Mr.S.M.A.Jinnah
: Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This petition is field seeking quashment of CC No.65 of 2021 pending on the file of the Judicial Magistrate Court, Periyakulam.

2.The case of the prosecution in brief:

On 23.11.2020 at about 12p.m, the second respondent lodged complaint with the following allegations. He was working as Union Deputy Secretary of All India Anna Dravida Munnetra Kazhagam. On 20.11.2020, at about 7.00pm, the accused has uploaded a video through Whatsapp by abusing the Tamil Nadu Chief Minister and Deputy Chief Minister in obscene language through social media. By such message, he spread defamatory allegations. On the basis of the complaint given by the second respondent, investigation was undertaken by registering the case and during the course of investigation, materials were collected and statement of witnesses have been recorded and after completing the investigation, Final Report has been filed against the petitioner stating that the petitioner has committed offence punishable under Sections 153, 504, 507 IPC r/w Section 67 of Information Technology(Amendment) Act 2008.



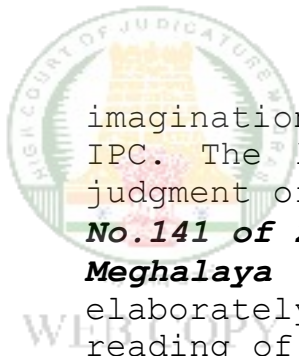
3. Seeking quashment of the CC No.65 of 2021, this petition is filed mainly on the ground that the petitioner is also belonged to the same All India Anna Dravida Munnetra Kazhagam and he is served as Town Panchayat's Student Wing Secretary and by condemning the illegal arrest of the political party leader he has uploaded a video. Then, that was removed. But in order to wreak vengeance due to political animosity, complaint has been given. The petitioner has completed law degree in SRM Institute of Science and Technology, Chengalpattu and now he is awaiting for enrollment.

4. Even though notice was ordered to the second respondent, there was no representation inspite of service of notice.

5. Heard both sides.

6. This is the case of dispute between two persons belonging to same political party. This petitioner claims to be the Secretary of Town Panchayat's Student Wing of the concerned political party, whereas the second respondent is the defacto complainant who claims to be the Deputy Secretary of the same political party in Periyakulam Union. Reading of the First Information Report shows that the petitioner has made defamatory allegations against the then Chief Minister and Deputy Chief Minister, criticizing them with regard to their style of political functioning and their close association with the Central Government. The petitioner would pray that even though such obscene message was uploaded by him, later it was removed immediately. Who was arrested at that time is not clear on record. But, however, the petitioner submitted that condemning the illegal arrest of the political leader, he has made such statement. But, whatever it may be, it is seen that it is the inter party political rivalry between the political functionaries. No doubt, reading of the message shows that it is most insulting and defamatory in nature. The language that has been used to describe the activities of the political leaders does not match the standard which is required for would be Advocate. The petitioner says that he has completed law degree in private university and now awaiting to be enrolled. Such being the position of the petitioner, such sort of obscene insulting defamatory statement is not expected from a person who claims to be a would be Advocate. Such activities on the part of the Advocate cannot be expected on any account. But, the issue herein is legal one. As I mentioned earlier, the language used is defamatory in nature. So, the person who have been defamed is a competent person to make a private complaint. But on behalf of the political leader, political functionaries cannot maintain the petition for defamation.

7. Going back to the penal provisions, that was mentioned in the Final Report is 153, 504, 507 IPC r/w Section 67 of Information Technology (Amendment) Act 2008. In the facts and circumstances of the case, Section 153 ingredients are not attracted. As I mentioned



imagination, it can be construed as the offence under Section 153 IPC. The learned counsel for the petitioner would rely upon the judgment of the Honourable Supreme Court reported in ***Criminal Appeal No.141 of 2021 @ SLP Crl.No.103 of 2021 Patricia Mukhim Vs State of Meghalaya & Others***, wherein the Honourable Supreme Court has elaborately discussed about the ingredients of the offences. So, reading of the allegations mentioned in the First information Report and as well as in the Final Report, it is clearly seen that there is no intention on the part of the petitioner to create any enmity and thereby inducing other persons to commit rioting. So, offences under Sections 153, 504 may not attract. Similarly the language that has been used in the message also does not attract the offences under Section 507 IPC. Since the main offences are not attracted, Section 67 of the Information Technology Act also not attracted. As I mentioned earlier, only defamed person is the competent to file private complaint. But in this case, it was not done by the above political functionaries. It is also seen that soon after the posting of the statement, he has removed the same, which shows that he has repentant for his action. So, that can be taken on record. But, however this petitioner can be allowed on condition that the petitioner must file an undertaking to the effect that he will not indulge in such activities in future. The undertaking affidavit must be filed within a week from the date of receipt of a copy of this order.

(*)8.Today i.e., on 17.09.2021, an undertaking affidavit dated 16.09.2021 has been filed. In view of the same, this petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

(*)Amended as per order of this Court Dated 16.09.2021 in Crl.OP(MD) No.8423/2021 and Crl.MP(MD)No.4327/2021.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

(*) Substituted the order already despatched on 15/09/2021

1.The Inspector of Police,
Devadanapatti Police Station,
Theni District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Crl.O.P. (MD)No.8423 of 2021 and
Crl.MP(MD) No.4327 of 2021
09.09.2021**

DJ(CO)
KB(15.09.2021) 4P 3C

RS (30.09.2021) 4P 3C