



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :23.02.2021

PRONOUNCE ON :23.03.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.10284 of 2017 and Crl.MP(MD)No.7021 of 2017

WEB COPY

1.Kuttus Gurusamy

DMK Headquarters Speaker,
Anna Arivalayam, Teynampet, Chennai.

2.Illa.Pugalenthil,

State Student Wing Secretary,
Anna Arivalayam, Teynampet, Chennai. :Petitioners/Petitioners
-Vs-

The Public Prosecutor,

Virudhunagar District At Srivilliputhur,
Virudhunagar District. :Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the complaint in C.C.No.6 of 2013 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and to quash the same as illegal.

For Petitioners:Mr.N.Satheeshkumar

For Respondent :Mr.M.Ganesan, Government Advocate (Crl.Side)

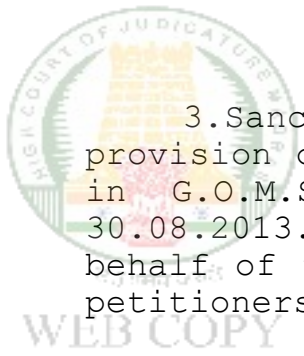
ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.6 of 2013 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

2.Brief facts of the case:-

The respondent, namely, the Public Prosecutor, Virudhunagar District, filed a private complaint against the petitioners herein, before the Trial Court with the following facts;-

During the relevant time, Selvi.Dr.J.Jeyalalithaa, was the Hon'ble Chief Minister of Tamilnadu and because of her service, she was held in High esteem by the Society and by that, she attained a high reputation, popularity and good name. The petitioners herein, made a public speech on 15.03.2013 at Gandhi Maidhanam Aruppukottai, Virudhunagar District, and during that speech, the speakers touched the administration of the Hon'ble Chief Minister of Tamilnadu and criticised the personal character of the Hon'ble Chief Minister of Tamilnadu. The speech was made by them in the capacity of Head Quarters Speaker and State Student Wing Secretary, of Dravida Munetra Kazhagam (DMK Party). which are per se defamatory and mischievous, which is an offence as defined under Section 499 IPC. The speech was made by them not in good faith, but, with an intention to tarnish the good image of the then Hon'ble Chief Minister of Tamilnadu.



3.Sanction for the prosecution was obtained as per the provision of Section 199 (4) (a) Cr.P.C as per the Government Order in G.O.M.S.No.917 Public (Law & Order-H) Department, dated 30.08.2013. The complainant is empowered to file a complaint on behalf of the then Hon'ble Chief Minister of Tamilnadu and so, the petitioners are liable to be punished offence under Section 500 IPC.

4.For quashing the complaint, the accused filed a petition before this Court, mainly on the ground that the Public Prosecutor is not competent to file a private complaint on behalf of the Hon'ble Chief Minister of Tamilnadu. Moreover, the speech made by the petitioners are not defamatory in nature in connection with the discharge of public function by the Hon'ble Chief Minister. The entire speech is only with regard to the personal act of the Hon'ble Chief Minister and not with reference to the discharge of any public function. Moreover, as per Section 199 (2) Cr.P.C, the learned Public Prosecutor can file a complaint for defamation only if it is in connection with the discharge of function of a public servant in connection with the affairs of the State. Complaint has been filed out of political vendetta and it is the clear of abuse of process of the Court.

5.Heard both sides.

6.The petitioners would heavily rely upon the judgment of the Hon'ble Supreme Court reported in **K.K.Misra Vs State of Madhya Pradesh CTJ 2018 SC 391** for the purpose of argument that as per the judgment of the Constitution Bench of the Hon'ble Supreme Court, Section 199 (2) Cr.PC can be invoked only in connection with the defamation committed against a public servant and Constitutional functionaries only in respect of acts or conduct in the discharge of public functions.

7.In a similar situation, the Co-ordinate Bench of this Court in a judgment rendered in **Cr1.OP(MD)Nos.22263 and 22300 of 2013** dated **18.06.2018** in the case of **VPR.Ilamparuthi Vs Public Prosecutor, Tirunelveli** has discussed the matter and has concluded that the Public Prosecutor can file a private complaint under Section 199(4)Cr.P.C only in cases, where defamatory speeches or defamation are made in connection with discharge of public function either by the public servant or by the State functionary. In that case also, the speaker of opposite party, namely, Dravida Munetra Kazhagam (DMK Party) made a public speech against the then Chief Minister of Tamilnadu. After going through the text of the speech made by the petitioners, the Court came to the conclusion that even though, the speech are *per se* defamatory over the personal character of Hon'ble the then Chief Minister of Taminadu, there is nothing in that speech to defame the then Hon'ble Chief Minister of Tamilnadu over her discharge of public function. According to the petitioners, the said decision is squarely applicable to this case and so, the complaint is liable to be quashed.



8.In the complaint, the relevant portion of the text of the speech delivered by the petitioners on 15.03.2013 is also extracted. Reading of the text of the speech shows that it is not in good taste. It is against the private life of the then Hon'ble Chief Minister of Tamilnadu. But, the utterances made, the tone and tenor and the intention by which, those speech was delivered clearly shows that it is not in connection with the conduct of the then Hon'ble Chief Minister over her discharge of function in the capacity of the Chief Minister of Tamilnadu. The speeches are in connection with her private life and her action with regard to the political function. So, it cannot be equated with that of the discharge of any public function by a public servant or State functionary.

9.Observation in the above said judgment, was made that if at all a private complaint ought to have been filed only by the affected party, namely the then Hon'ble Chief Minister of Tamilnadu, Selvi.Dr.J.Jeyalalithaa, the office of the learned Public Prosecutor cannot be utilised for this purpose. So, the sanction accorded by the Government in G.O.M.S.No.917 Public (Law & Order-H) Department, dated 30.08.2013, is also not in accordance with law as held by the Hon'ble Supreme Court in the judgment reported in **K.K.Misra Vs State of Madhya Pradesh CTJ 2018 391.**

10.In the result, this Criminal Original Petition is liable to be allowed and accordingly, the same is allowed. C.C.No.6 of 2013, pending on the file of the Principal District and Sessions Judge, Virudhunagar District, at Srivilliputhur, stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

/ /2021

SUB ASSISTANT REGISTRAR(CS)

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
The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.
dss(PA) KUN(CO) SMN/12.05.2021/3P/2C.

Crl.O.P. (MD)No.10284 of 2017 and Crl.MP(MD)No.7021 of 2017
23.03.2021