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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 10.03.2021

DATE ON WHICH PRONOUNCED :31.03.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.13775 of 2017
and
Crl MP(MD)Nos.9271 & 9272 of 2017

Sadhurajan ... Petitioner/Accused

Vs.

The Public Prosecutor,
Madurai District,
O/o. Public Prosecutor,
District Court Building,
Madurai. ... Respondent/Complainant

(Representing on behalf of the Chief Minister of Tamilnadu)

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertains to C.C.No.25 of 2013 on the file of the 1st Additional Sessions Judge, Madurai District and quash the same.

For Petitioner : Mr.D.Sasikumar
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.25 of 2013 on the file of the 1st Additional Sessions Judge, Madurai District.

2. Brief facts of the case :-

The respondent, namely, the Public Prosecutor, Madurai District, filed a private complaint against the petitioner 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 petitioner herein, made a public speech on 22.05.2013 at Oomachikulam Bus Stand, Madurai and during that speech, the speaker touched the administration of the Hon'ble Chief Minister of Tamilnadu and criticised her personal character. The speech was made by him in the capacity of Head Quarters Speaker of Dravida Munetra Kazhagam (DMK Party). which are *per se* defamatory and mischievous, which is an offence as defined under Section 499 IPC.

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The speech was made by him not in good faith, but, with an intention to tarnish the good image of the then Hon'ble Chief Minister of Tamilnadu. The speech made by the petitioner was taken down by the shorthand writer, attached to the Police Department and the same, was transcribed in Tamil and the transcribed text is attached along with the complaint.

3. Sanction for the prosecution was obtained as per the provision of Section 199 (4) Cr.P.C as per the Government Order in G.O.M.S.No.1228 Public (Law & Order-H) Department, dated 19.10.2013. The complainant is empowered to file a complaint on behalf of the then Hon'ble Chief Minister of Tamilnadu and so, the petitioner is liable to be punished under Section 500 IPC.

4. For quashing the complaint, the accused filed a petition before the Trial 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 petitioner is 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 abuse of process of the Court.

5. Heard both sides.

6. The petitioner 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 **Crl.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

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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 petitioner, 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 petitioner, 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 petitioner on 22.05.2013 is also extracted. Reading of the text of the speech shows that it is not defamatory in nature. The petitioner appears to have expressed his grievance over the policy of the Government and discharge of its public function. The democracy permits dissents and opposite views. What has been expressed are only the dissents and not defamatory.

9. Observation in the above said judgments, 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 to the Government in **G.O.M.S.No.1228 Public (Law & Order-H) Department, dated 19.10.2013,** 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.25 of 2013 pending on the file of the 1st Additional Sessions Judge, Madurai District, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To
1.The 1st Additional Sessions Judge,
Madurai District.

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

Crl.O.P.(MD)No.13775 of 2017
and
Crl MP(MD)Nos.9271 & 9272 of 2017
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