

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2021

PRONOUNCED ON : 11.02.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.7131 of 2021 and
CrI.M.P.No.4750 of 2021

Thiru.S.Selvam	...	Petitioner
	Vs.	
City Public Prosecutor, City Civil Court Buildings, Chennai - 600 104.		... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for all the records and quash all proceedings in C.C.No.33 of 2015 on the file of the learned Special Court for Cases relating to the Elected MP and MLA Court, Singaravelar Maligai, Chennai.

For Petitioner : Mr.S.Senthilmurugan

For Respondent : Mr.Hasan Mohamed Jinnah,
State Public Prosecutor assisted by
Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.33 of 2015, pending on the file of the Special Court for Cases relating to the Elected MP and MLA, Singaravelar Maligai, Chennai/trial Court.

2.The petitioner/A2, who is facing trial in C.C.No.33 of 2015, for offence under Sections 500 and 501 IPC, has filed this Criminal Original Petition. In this case, A1, the then Chief Minister died on 07.08.2018.

3.The learned counsel for the petitioner submitted that the petitioner/A2 is the Editor and Publisher of Tamil daily 'Murasoli'. A1, the former Chief Minister written an article, which was printed and published in 'Murasoli' Tamil daily by the petitioner. Since the article contained defamatory statement

against the then Chief Minister of the Tamil Nadu, a complaint has been lodged by the respondent before the trial Court on the strength of the Government Order in G.O.Ms.No.1305, dated 23.11.2015. The learned counsel further submitted that the trial Court before taking the complaint on file, failed to note that the complaint is a political motivated one to wreak vengeance against the DMK political party. The petitioner merely published the article, which is the view of the general public and it was not the personal view of the petitioner. The petitioner is neither a politician nor an elected member. In this case, A1 passed away on 07.08.2018. Thereafter, there is no necessity to transfer the case from the Principal Sessions Judge, Chennai to the file of the Special Court for cases related to MP and MLAs, Chennai.

4.The learned counsel further submitted that the alleged article was published on 21.11.2015 in the Tamil daily 'Murasoli' in the heading 'நான் காண்டு கால ஆட்சியில் சாதித்தது என்ன?'. On going through the entire article published, nowhere the official functioning of the then Chief Minister is criticized or questioned. Thus, looking the article from any angle, no offence of defamation is made out against the then Chief Minister. When the statements made in the article are not defamatory statements, publication of the same will not constitute any offence of defamation. The petitioner is only an Editor and Publisher of Tamil daily 'Murasoli' and he hails from a respectable family with legacy. The Tamil daily 'Murasoli' is the official daily of the political party, the petitioner published the article written by A1 to educate the public about the decision taken by the former Chief Minister, which is the part of the democratic process and that cannot be termed as defamation. He further submitted that the sanction accorded by the Government, is nothing but malafide and non-application of mind. The complaint is only an attempt to interfere with the fundamental right of the petitioner under Article 19(1)(a) & 21 of the Constitution of India. Taking cognizance of the complaint is nothing but interfering with the freedom of speech which is one of the most valuable right guaranteed under the Constitution of India.

5.The learned State Public Prosecutor appearing for the respondent submitted that on receipt of the G.O.Ms.No.1305, dated 23.11.2015, the respondent filed a complaint against the petitioner for offence under Sections 500 & 501 IPC invoking Section 199(4) of Cr.P.C. The petitioner has not denied the article published by him in Tamil Daily 'Murasoli' on 21.11.2015. In the article, the petitioner had specifically named the then Chief Minister Selvi.J.Jayalalitha and directly impeaches her reputation. The transcribed defamatory portion of the article is produced in the complaint. The petitioner

without verifying the article made by A1, published the same in 'Murasoli' on 21.11.2015. Thus, the article impeaches the reputation of the then Chief Minister.

6.He further submitted that the Government issued G.O.Ms.No.523, dated 10.08.2021, on the recommendation of the Advocate General and Public Prosecutor, High Court of Madras and they have opined that the defamation cases may be withdrawn as per Section 321 of Cr.P.C.

7.Considering the rival submission and on perusal of the materials, it is seen that though the Government has passed the G.O.Ms.No.523, dated 10.08.2021 for withdrawal of the case, the Hon'ble Apex Court on 10.08.2021 in the case of "Ashwini Kumar Upadhyay Vs. Union of India and another in W.P.(C).No.699 of 2016", has issued certain guidelines to check the misuse of prosecutor's power in withdrawing cases under Section 321 Cr.P.C. Further, the power under Section 321 Cr.P.C., is required to be utilized with utmost good faith to serve the larger public interest and it cannot be used for extraneous and political considerations. The nature and gravity of the offence, its impact upon public life especially where the matters involve public funds and the discharge of a public trust is to be seen. In the case of the sitting former MPs and MLAs, directions has been issued that no prosecution case shall be withdrawn without the lieu of the High Court.

8.From the perusal of the materials, it is seen that in the case of "K.K.Mishra Vs. The State of Madhya Pradesh and Another reported in CDJ 2019 SC 391", the Hon'ble Apex Court had drawn guidelines with regard to Section 199(2) Cr.P.C., which provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants. It would be beneficial to extract the paragraph Nos.7 and 8 of the above said Judgment:-

"7. Section 199(2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the concerned functionary or public servant, as may be. The prosecution under Section 199 (2) Cr.P.C. is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the Competent Authority in the State/Central Government under Section 199 (4) of the Code. Such a complaint is required to be filed in a Court of Sessions that is alone vested with the

jurisdiction to hear and try the alleged offence and even without the case being committed to the said court by a subordinate Court. Section 199(2) Cr.P.C. read with section 199(4) Cr.P.C., therefore, envisages a departure from the normal rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in sub-section (2) of Section 199 Cr.P.C. by sub-section (6) thereof.

8. The rationale for the departure from the normal rule has been elaborately dealt with by this Court in a judgment of considerable vintage in P.C. Joshi and another vs. The State of Uttar Pradesh¹ [paragraph 9]. The core reason which this Court held to be the rationale for the special procedure engrafted by Section 199(2) Cr.P.C. is that the offence of defamation committed against the functionaries mentioned therein is really an offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special procedure.

¹ AIR 1961 SC 387 P.C. Joshi (supra), however, specifically dealt with the provisions of Section 198B of the Code of Criminal Procedure, 1898 ("old Code") which are pari materia with the provisions of Section 199 of the Cr.P.C. ("new Code")."

9. It is clearly stated that the offence of defamation committed attracting Section 199(2) Cr.P.C., against the functionaries mentioned therein is to be seen, where an offence committed is against the State and the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution. Hence the special provision and the special procedure.

10. On perusal of the Government Order and the complaint, it is seen that no such imputation was made in discharge of public function of the then Hon'ble Chief Minister of Tamil Nadu. The decision of the Hon'ble Apex Court in the case of K.K. Mishra (cited supra) is consistently followed by this Court in the case of "Karur Murali Vs. Public Prosecutor, Tirunelveli in CrI.O.P. (MD).No.17415 of 2018, CrI.O.P.No.2453 of 2015 and CrI.O.P.No.23619 of 2018."

11.The petitioner is the Printer and Publisher of Tamil daily 'Murasoli', a political organ of Dravida Munnetra Kazhagam. Some political statements published in the Tamil daily 'Murasoli' on 21.11.2015. The text in the complaint are personal in nature and no way pertain to the public functioning of the then Chief Minister. In view of the same, the complaint filed before the trial Court is liable to be quashed.

12.Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.33 of 2015, on the file of the Special Court for Cases relating to the Elected MP and MLA, Singaravelar Maligai, Chennai is hereby quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Special Court for Cases
relating to the Elected MP and MLA,
Singaravelar Maligai, Chennai.
- 2.The City Public Prosecutor,
City Civil Court Buildings,
Chennai - 600 104.
- 3.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.7131 of 2021

PMK(CO)
GMY(21/02/2022)