



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.Nos.27705 & 27706 of 2012, 12608, 12609 and 12610 of 2013
and W.M.P.Nos.17025 and 17026 of 2017 and M.P.No.2 of 2012

S.Selvam,
Printer, Publisher & Editor,
"Murasoli", Murasoli Achagam,
No.180, Kodambakkam High Road,
Chennai - 600 034.

...Petitioner
in all W.Ps.

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Law and Company Affairs,
Shastri Bhavan, New Delhi - 110 001.
2. The State of Tamilnadu,
Represented by its Secretary to Government,
Public Department, Fort St.George,
Chennai - 600 009.
3. The City Public Prosecutor,
City Civil Court Buildings,
Chennai - 600 104.

...Respondents
in all W.Ps.

PRAYER in W.P.No.27705 of 2012: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the G.O.Ms.No.761, Public (Law and Order - H) Department dated 05.09.2012 issued by the second respondent and to quash the same as the same is an abuse of the process of law and is unconstitutional and illegal as it affects the petitioner's right to freedom of speech and expression and that of the press and Media.

PRAYER in W.P.No.27706 of 2012: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the



G.O.Ms.No.750, Public (Law and Order - H) Department dated 30.08.2012 issued by the second respondent and to quash the same as the same is an abuse of the process of law and is unconstitutional and illegal as it affects the petitioner's right to freedom of speech and expression and that of the press and Media.

PRAYER in W.P.No.12608 of 2013: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the G.O.Ms.No.145, Public (Law and Order - H) Department dated 11.02.2013 issued by the second respondent and to quash the same as the same is an abuse of the process of law and is unconstitutional and illegal as it affects the petitioner's right to freedom of speech and expression and that of the press and Media.

PRAYER in W.P.No.12609 of 2013: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the G.O.Ms.No.132, Public (Law and Order - H) Department dated 06.02.2013 issued by the second respondent and to quash the same as the same is an abuse of the process of law and is unconstitutional and illegal as it affects the petitioner's right to freedom of speech and expression and that of the press and Media.

PRAYER in W.P.No.12610 of 2013: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the G.O.Ms.No.1059, Public (Law and Order - H) Department dated 20.12.2012 issued by the second respondent and to quash the same as the same is an abuse of the process of law and is unconstitutional and illegal as it affects the petitioner's right to freedom of speech and expression and that of the press and Media.

For Petitioner
in all W.Ps. : M/s.S.S.Jayanthi

For Respondent
No.1 : M/s.S.Haja Mohideen Gisthi

For Respondent
No.2 : M/s.M.Rajendiran
Additional Government Pleader



For Respondent

No.3

: M/s.C.E.Pratap

Government Advocate (Crl.Side)

WEB COPY

C O M M O N O R D E R

The petitioner in all these writ petitions is one and the same challenging the Government Orders issued by the second respondent on the grounds of abuse of process of law, unconstitutional and illegal, as it affects the petitioner's right to freedom of speech and expression.

2. The petitioner is the Printer, Publisher and Editor of the Tamil Daily "Murasoli", which is a reputed Tamil Daily Newspaper publication known for its honest and ethical reporting, widely read across the Country for more than 50 years. It is stated that the second respondent claiming that the news items published in Tamil Daily "Murasoli" are defamatory and allegedly punishable under Sections 500 and 501 of the Indian Penal Code, issued various Government Orders authorizing the third respondent herein to file defamation complaints against the petitioner and Thiru M.Karunanidhi, Author of "Murasoli", for authoring and publishing various news items in Tamil daily "Murasoli" on various titles viz., "கலைஞர் பதில்கள்" and "கலைஞர் கடிதம்" on various dates. Subsequently, complaints were filed before the Principal Sessions Court, Chennai, against the petitioner and Thiru M.Karunanidhi and summons were issued for their appearance and defend themselves for the alleged offences under Sections 500 and 501 of the Indian Penal Code. Challenging the said Government Orders, the petitioner is before this Court.

3. According to the petitioner, everyone has a fundamental right to form his opinion on any issue of general concern and every citizen can form and inform the others the opinion he has, a democracy is based on free debate and open discussions. Further, Sections 500 and 501 of the Indian Penal Code run contrary to the guarantee of free speech in a democratic country like India. Challenging the said Government Orders, the petitioner is before this Court.

4. Heard the submissions made on either side and perused the materials available on record.

5. Today when the matters are taken up for final hearing, the learned Additional Government Pleader would submit that the State Government has already issued Press Release



No.518, dated 29.07.2021, wherein the Government of Tamilnadu has taken a decision to drop all the cases filed in this regard.

6. In a similar circumstance, this Court has already passed an order in W.P.No.5129 of 2012, etc. batch, dated 21.05.2022. The relevant paragraphs of the said order are extracted as follows:-

"49. State is like a parent for all citizens in so far as Defamation law is concerned. It is normal for some parents to face vituperative insults from their children. Despite those insults, parents don't disown their children quite easily. They always have the hope that their children will mend themselves in the near future. Only in rarest of rare cases when the character and behaviour of their children is irretrievably broken down and irreconcilable, the parents disown them. The attitude of the State with regard to defamation must also be the same as their tolerance level towards its citizens in so far as defamation is concerned must be akin to that of parents. When the state is having other avenues under law to make the offender realise the mistake if any, the criminal defamation law under section 499 and 500 IPC should be sparingly used by the State. An individual or a public servant/constitutional functionary can be impulsive but not the State which will have to show utmost restraint and maturity in filing criminal defamation cases. If the State becomes an impulsive prosecutor in criminal defamation matters that too in an era of social media where there are scores of abusive contents made against public figures, the Sessions Court will get clogged with innumerable matters which are sometimes vindictive in nature only to settle scores with opposition political parties. The intention of the legislature would never have been for this unlawful object.

50. The State must be fully convinced based on the materials that the ingredients of criminal defamation under section 499 IPC have been fully satisfied and the act committed by the alleged offender does not come within any of the many exceptions contained in section 499 IPC. This Court obtained from the registry of this Court statistics of the cases filed under section 199(2) Cr.P.C. through the public prosecutor of Tamil Nadu in the State of



WEB COPY

Tamilnadu from the year 2012 to 2020 and finds a slew of cases filed totally numbering 226 cases are pending on the file of various Sessions courts till date. Even as seen from these batch of writ petitions, within a short period, the State has filed a slew of Criminal defamation cases. As seen from the data, irrespective of political party who is in power, cases under section 199(2) Cr.P.C. have been filed. In many cases, the High Court has stayed the prosecution. Due to the mechanical filing of complaints under section 199(2) Cr.P.C., the Sessions Courts are sometimes clogged with those matters due to reckless filing without application of mind and sometimes vindictively. This menace will have to be curbed and nipped in the bud. The Criminal defamation law is meant for a laudable object in real cases of necessity and cannot be misused by using the State as a tool to settle scores of a public servant/constitutional functionary over his/her adversary. A public servant/constitutional functionary must be able to face criticism. As public servants/constitutional functionaries, they owe a solemn duty to the people. The state cannot use criminal defamation cases to throttle democracy.

51. In criminal defamation cases, police cannot register FIR under section 499 IPC against the accused. Only through a complaint under section 199 Cr.P.C., the defamer can be prosecuted. The level of scrutiny by a Sessions Judge/Magistrate before taking cognizance of criminal defamation cases under section 499 IPC is more stringent and painstaking as there is no police report/charge sheet available as in the case of cognizable offences where the Police Officer submits an investigation report under section 173 (3) of Cr.P.C. to the Learned Magistrate. The legislature has tightened the screws in so far as criminal defamation cases filed through a public prosecutor under section 199(2) Cr.P.C. are concerned to avoid any abuse or misuse of the said provision.

52. Insofar as the role of the public prosecutor is concerned, Bairam Muralidhar's case rendered by the Hon'ble Supreme referred to supra has made it clear that a public prosecutor cannot act like a mere post office but should independently apply his



WEB COPY

mind before prosecuting the criminal complaint and he should also be fair to the court.

53. In the considered view of this court, following are the basic requirements of a Public Prosecutor:

a) A Public prosecutor must consider himself/herself as an agent of justice.

b) There should not be on the part of the public prosecutor a blind eagerness for, or grasping at a conviction.

c) The prosecution of the accused persons has to be conducted with utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community. There should not therefore be seemly eagerness for, or grasping at a conviction.

d) A public prosecutor should not by statement aggravate the case against the accused, or keep back a witness because his/her evidence may weaken the case of the prosecution.

e) A public prosecutor should place before the Court whatever evidence is in his/her possession.

f) A public prosecutor should discharge his/her duties fairly and fearlessly and with full sense of responsibility that attaches to his/her position.

g) Prosecution does not mean persecution.

54. In defamation cases filed under Section 199(2) Cr.P.C., the public prosecutor plays a very vital role. The role is very special because in those matters, the public prosecutor plays a dual role both as a person representing the public servant/constitutional functionary as well as a public prosecutor. Therefore, the cardinal principles mentioned supra will have to be strictly adhered to by the public prosecutor while filing complaints under section 199(2) Cr.P.C.

55. The Sessions Court before taking cognizance of a complaint filed under section 199(2) Cr.P.C. has to apply its judicial mind to the materials available on record and only if it is



WEB COPY

satisfied that ingredients for taking cognizance under Section 199(2) has been made out, shall take cognizance and issue summons to the accused. When a specific procedure is contemplated under section 200 Cr.P.C., it cannot be deviated by adopting some other procedure which is not prescribed, even though it may be convenient to the complainant. The purpose of recording the substance of sworn statement by the Magistrate/Sessions Judge is to enable the Magistrate/Sessions judge to satisfy himself of the allegation in the complaint to proceed further in the matter and also put the accused on notice about the allegations.

56. This Court having elaborately considered and narrated the criminal defamation law and the freedom of speech and expression provided under Article 19(1) of the Constitution of India shall now consider the merits of each of the writ petitions separately. In all the cases, the core ingredient required for prosecution through a public prosecutor under section 199(2) Cr.P.C. namely "Defamation of the State" is missing. In all the matters, while granting sanction for prosecution to a public prosecutor, the respective sanction orders are totally silent as to whether the state has been defamed on account of the alleged defamation of the public servant/constitutional functionary while discharging his/her public functions. It has been made crystal clear by the Hon'ble Supreme Court in KK Mishra's case as well as in P.C Joshi's case referred to supra that prosecution under section 199(2) Cr.P.C. is on account of defamation against the State.

57. As laid down by various decisions of the Hon'ble Supreme Court as well as the High courts, before granting sanction for prosecution, the competent authority of the State shall have to apply its mind to the materials and should be satisfied with the same and only thereafter should sanction prosecution. As observed earlier, in all the cases which are the subject matter of consideration by this court, the State has sanctioned prosecution in a mechanical fashion by total non application of mind as the fundamental requirement for prosecution under



WEB COPY

section 199(2) Cr.P.C. namely "Defamation of the State" does not find a place in all the sanction orders. The public prosecutor as well as the Sessions Judge in cases where cognizance has already been taken by the Sessions Court have also not applied their mind independently as the core essence of prosecution under section 199 (2) Cr.P.C. namely "Defamation of the state" has not been satisfied as seen from the sanction orders. On this score alone, all the Government Orders and the consequential complaints for criminal defamation under section 199(2) Cr.P.C. will have to fail.

58. The pleadings in the respective complaints also does not spell out any defamation of the State. The Public Prosecutor or any other witness has also not been examined as a witness and given their sworn statement before the Sessions Court which is mandatory under Section 200 Cr.P.C. The Sessions Court has also in a mechanical fashion by total non application of its judicial mind and without detailing the materials it had scrutinized has taken cognizance and issued process to the accused. All these factors will conclusively infer abuse of process of law against the respective accused and hence, all the sanction orders as well as the corresponding complaints filed under Section 199(2) will have to be necessarily quashed.

59. These batch of writ petitions involve some cases where on the face of it, a conclusive inference can be made that no Criminal Defamation whatsoever has been made out. However, in respect of other cases, the accused can be prosecuted for criminal defamation under section 199(6) Cr.P.C. before the Magistrate but not under Section 199(2) Cr.P.C. before the Sessions Court as no "Defamation against the state" has been made out or projected to by the State in its sanction orders or in the respective Complaints. This court shall now individually deal with each of the writ petitions which are the subject matter of consideration and segregate them into cases where there is no defamation at all and cases where defamation may fall under section 199(6) Cr.P.C. to prevent any further abuse against the Petitioners against whom no criminal defamation whatsoever has been made out.



7. This Court is also inclined to follow the same order passed in the above-mentioned Writ Petition and accordingly, these Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
Ministry of Law and Company Affairs,
Shastri Bhavan, New Delhi - 110 001.
2. The Secretary to Government,
Public Department, Fort St.George,
Chennai - 600 009.
3. The City Public Prosecutor,
City Civil Court Buildings,
Chennai - 600 104.

+1 CC to The Government Pleader sr 24520.

+1 CC to The Public Prosecutor, sr 24248, 24250, 24251.

W.P.Nos.27705 & 27706 of 2012, 12608, 12609 and 12610 of 2013
and W.M.P.Nos.17025 and 17026 of 2017 and M.P.No.2 of 2012

SSN(CO)
SP(13/05/2022)