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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.7266 of 2021
and
Crl.M.P.No.4845 of 2021

R.S.Bharathi
Organization Security,
Dravida Munnetra Kazhagam,
No.16, 26th street,
Thillai Ganga Nagar,
Nanganallur, Chennai - 600 061. ... Petitioner

Vs.

City Public Prosecutor,
City Civil Court Buildings,
Chennai - 600 104. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to call for the records in C.C.No.36 of 2016 on the file of the Hon'ble Special Court for Trail of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and quash the same in the interest of justice.

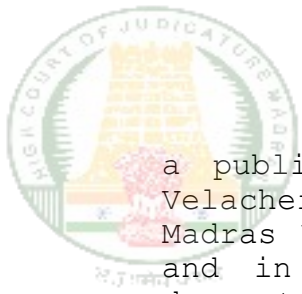
For Petitioner : Mr.S.Manuraj

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

O R D E R

The Criminal Original Petition has been filed to call for the records in C.C.No.36 of 2016 on the file of the Hon'ble Special Court for Trail of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and quash the same.

2. The complaint given by the City Public Prosecutor against the petitioner is that the petitioner is that there was



a public meeting held within the jurisdiction limit of J-7, Velachery Police Station at Gandhi Salai, organized by South Madras Youth Wing on 02.11.2015 from 19.00 hours to 22.00 hours and in that public meeting, the petitioner had delivered a derogatory and defamatory speech against the Government lead by the then Chief Minister Dr.J.Jayalalitha.

3. Mr.S.Manuraj, learned counsel appearing for the petitioner would submit that the alleged speech stated to have been delivered by the petitioner in a political meeting noway amounts to defamation as against the then Chief Minister in discharge of her public duties. Even assuming such statements may be defamatory, but, then in the absence of the nexus between the same and the discharge of public duties of the office of the Chief Minister, the remedy under Section 199(2) and 199(4) of Cr.P.C., will not be available to the Chief Minister. At the most, it amounts only to a criticism by a political opponent and thereby, the petitioner can only be prosecuted under Section 500 of IPC personally by her and not through the Public Prosecutor. Further, the Tamil Nadu Government by G.O.Ms.No.235, dated 01.03.2016 issued by the Public (Law & Order-H) department, had accorded sanction to the Respondent to prosecute the petitioner for the offence under Section 499 IPC, punishable under Section 500 IPC. Subsequently, the Government by a later G.O.Ms.No.560 dated 10.08.2021 issued by the Public (Law & Order-H) department has directed withdrawal of prosecutions from the above said case and also dropped the further action in the above said case. In such circumstances, the prosecution as against the petitioner is nothing but an abuse of process of law and thereby he would seek for quashing the proceedings.

4. The learned Additional Public Prosecutor would submit that whether the statement delivered during the speech is of the defamative imputation and whether it caused damage to the public authorities or State or in personal capacity is a matter for trial and it cannot be decided at this stage in a quash petition. However, he would admit that the Government had issued a G.O.Ms.No.560 dated 10.08.2021, directing the Public Prosecutor to withdraw the case against the petitioner.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record including the transcript of the alleged defamatory speech.

6. It is contented by the counsel for the petitioner that to constitute an offence under Section 500 IPC against the Constitutional functionaries or the Minister or Chief Minister of State, it has to be established by the prosecution that the alleged imputation made is in respect of the conduct of the



public servant/ public functionary in discharge of his/her public functions and the public functions stand on a different footing than the private activities of a public servant. If the statement made appears to be the criticism with regard to the political activities of a person in personal capacity, the right is guaranteed to the petitioner under Article 21 of the Constitution of India and further the complaint can be filed only in the personal capacity before the Court of Magistrate and state machinery cannot be used to initiate proceedings.

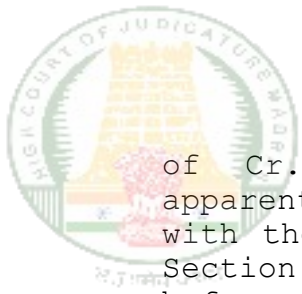
7. At this juncture, it is relevant to refer to the judgment of the Hon'ble Supreme Court in K.K.Mishra Vs. The State of Madhya Pradesh reported in (2018) 6 SCC 676, where in the Hon'ble Apex Court has held as follows:-

11. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy Under Section 199(2) and 199(4) Code of Criminal Procedure will not be available. It is the remedy saved by the provisions of Sub-section (6) of Section 199 Code of Criminal Procedure i.e. a complaint by the Hon'ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to.

8. Similarly, in Kartar Singh Vs. State of Punjab reported in AIR 1956 SC 541, the Hon'ble Apex Court has held that vulgar abuses made against the public functionaries will not amount to defamation of the State but may amount only to the defamation of the public functionaries concerned and therefore, they are only personal in nature. The Hon'ble Apex Court, though finding that the slogans were certainly defamatory of the public functionaries, has held that the redress of that grievance was personal to the individuals and state machinery cannot be used to initiate the proceedings.

9. This Court, having meticulously perused the transcript of the speech alleged to have been delivered by the petitioner, is of the considered opinion that it is only a political criticism on the then Chief Minister in her personal capacity and by no stretch of imagination, it would amount to defamation against the then Chief Minister in discharge of her official functions.

10. As state above, to take cognizance of the complaint under Section 199(2) of Cr.P.C, the so called defamation should be directly attributed to a person in discharge of his/her public functions and only in such circumstances, Section 199(2)



of Cr.P.C will stand attracted. If the said imputation apparently made against the public functionaries, has no nexus with the discharge of public duties, the remedy available under Section 199(6) of Cr.P.C is only to make private complaint before the regular Magistrate and the remedy under Section 199(2) and 199(4) will not be available. Otherwise, if any criticism or defamation in the nature of personal capacity and such defamation have no nexus with the discharge of official function of public functionaries of the state, complaint cannot be made by the Public Prosecutor merely on the basis of Government Order.

11. In view of the foregoing reasons and the decisions cited supra, and also in view of the subsequent Government Order dated 10.08.2021 directing withdrawal of prosecution, this Court is of the opinion that the pending proceedings in C.C.No.36 of 2016, on the file of the Hon'ble Special Court for Trail of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, is only an abuse of process of law and the proceedings are quashed.

12. Accordingly, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

ham/rgi

To

1. The Special Court for Trail of Cases
(related to Members of Parliament and
Members of Legislative Assembly of Tamil Nadu,
Chennai).
2. The City Public Prosecutor,
City Civil Court Buildings,
Chennai - 600 104.
3. The Public Prosecutor,
High Court of Madras.



+lcc to Mr.S.Manuraj, Advocate SR.No.16726

+lcc to Public Prosecutor, High Court, Madras SR.No.17282

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Cr1.O.P.No.7266 of 2021
and
Cr1.M.P.No.4845 of 2021

PMK (CO)
GMY (31/03/2022)