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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.10.2021

PRONOUNCED ON : 21.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.7130 of 2021

and

CrI.M.P.No.4748 of 2021

Thiru.M.K.Stalin,
President,
Dravida Munnetra Kazhagam,
Anna Arivalayam,
No.367 & 369, Anna Salai,
Teynampet, Chennai - 600 018.

...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 the records and quash all the proceedings in C.C.No.46 of 2020 on the file of the learned Special Court No.I 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.46 of 2020, on the file of the Special Court No.I for Cases relating to the Elected MP and MLA, Singaravelar Maligai, Chennai.

2.The gist of the case is that at the time of occurrence, the petitioner/A1 was the Leader of the Opposition and President of political party viz., Dravida Munnetra Kazhagam. The petitioner/A1 made defamatory statement against the then Hon'ble



Chief Minister of Tamil Nadu on 25.06.2020, which was published in the Tamil Daily 'Murasoli' under the caption 'ஊரடங்கை தளர்வுக்கு மேல் தளர்வு, செய்து, சட்டத்தின் சாரத்தையே மண்ணில் கொட்டிய எடப்பாடி! மின்கட்டணச் சலுகை மறுப்பு, பெட்ரோல், டீசல் விலை உயர்வு, என்று மக்கள் மீது கொரோனா பேரிடரிலும் நிதி நெருக்கடித் தாக்குதல் தலைவர் மு.க.ஸ்டாலின் கடும் கண்டனம்!'. The petitioner/A1 has made this defamation statement defaming the then Hon'ble Chief Minister which is widely published in the Tamil daily 'Murasoli' on 25.06.2020 by A2, Editor and Publisher and A3, Printer of the Tamil daily 'Murasoli'. This defamatory statement reveals serious imputation against the then Hon'ble Chief Minister and it was published only with an intention to malign his reputation while discharging his public function and duty. Hence, the Government of Tamil Nadu has accorded sanction to the respondent under Section 199(4)Cr.P.C., vide G.O.Ms.No.375, dated 15.07.2020 for filing the above complaint before the concerned Court. As against the complaint in C.C.No.46 of 2020, this petition has been filed.

3.The learned counsel for the petitioner submitted that the statement of the petitioner/A1, who was the President of Dravida Munnetra Kazhagam, was published in Tamil daily 'Murasoli' on 25.06.2020. In the article, some references with regard to the irregularities during the COVID-19 lock down, refusing the electricity bill concession and raising price of petrol and diesel, have been made. This cannot termed as defamatory statements. The petitioner as a Leader of Opposition party in democracy, is duty bound to raise objection and criticise the steps taken by the Government affecting the general public. It is the democratic duty as enshrined in the Constitution of India. The sanction accorded by the prosecution under Section 199(4) of Cr.P.C., is not proper. The G.O.Ms.No.375, dated 15.07.2020, is passed mechanically, without application of mind and it is bad in law. The text of imputation found in the above said Government Order if read on a whole, will not amount to any defamatory statement.

4.He further submitted that the respondent/the City Public Prosecutor failed to satisfy as to how sanction for prosecution was accorded, when the imputation does not pertain to discharge of any official functioning of the then Hon'ble Chief Minister. He further submitted that the respondent would never to be a post man and his office is not the Post office to merely lay a complaint without examining the evidence and material on record. The respondent has not verified whether the requirement of law under Section 199(2) of Cr.P.C., is made out. The trial Court had not independently gone into the materials produced, but merely taken the complaint on file. In view of such fundamental defects, the prosecution cannot be proceeded against the petitioner. Further, in the complaint, it is nowhere stated that



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due to the imputation caused by the petitioner, the reputation of the then Hon'ble Chief Minister was directly or indirectly lowered the moral or intellect character in estimation of others. The article was made in good faith and not to defame the intellectual character of any Minister.

5.He further submitted that in G.O.Ms.No.575, dated 10.08.2021, the defamatory article reproduced. On going through the same, nowhere the petitioner had stated anything against the then Chief Minister or any other Ministers in particular. The petitioner did not have any intention to harm the then Hon'ble Chief Minister's reputation directly or indirectly. From the year 2020, the case before the trial court is kept idle without any progress. The petitioner is the Leader of the Opposition Party and President of Dravida Munnetra Kazhagam and he hails from a respectable family with legacy. He is a political personality, made certain comments, informed the public and others about the sorry State of affairs, which is part of democratic process and it cannot be termed as defamation.

6.The learned State Public Prosecutor submitted that on receipt of the G.O.Ms.No.375, dated 15.07.2020, the respondent has filed a complaint invoking Section 199(4) of Cr.P.C. The petitioner was not denied the article published in the Tamil daily 'Murasoli' on 25.06.2020. The petitioner with an intention to malign the reputation of the then Hon'ble Chief Minister made such article and published the same in 'Murasoli' Tamil daily. The defamatory article is extracted in the complaint.

7.He further submitted that the Government had issued the G.O.Ms.No.575, 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.

8.Considering the rival submission and on perusal of the materials, it is seen that though the Government has passed the G.O.Ms.No.575, 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 leave of the High Court.

9. 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



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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")."

10.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.

11.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 is found. 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."

12.The petitioner is the Leader of the Opposition party at the time of occurrence and some political statements made and published in the Tamil daily 'Murasoli'. The allegations made in the complaint are general in nature and no way pertains to the public functioning of the then Hon'ble Chief Minister or any other Minister. In view of the same, the complaint filed by the respondent before the trial Court is liable to be quashed.

13.Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.46 of 2020, on the file of the Special Court No.I for Cases relating to the Elected MP and MLA, Singaravelar Maligai, Chennai is hereby quashed against all the accused, who are similarly placed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Special Court No.I
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.

Crl.O.P.No.7130 of 2021

PMK(CO)
RGA(08/03/2022)