



Crl.O.P.No.14133 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2023

PRONOUNCED ON: 07.08.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.14133 of 2019

and

Crl.M.P.No.6850 of 2019

- 1.Gopal @ Nakkheeran Gopal
- 2.Ramakrishnan
- 3.Dhamodaraprakash
- 4.Kovai Lenin
- 5.Elayaselvan

...
/vs/

Petitioners

1. Inspector of Police,
D-4 Zam Bazaar Police Station,
Royapettah, Chennai
(In Crime No.212 of 2018)

- 2.The Deputy Secretary to Governor
and Comptroller,
Tamil Nadu Raj Bhavan,
Chennai.

...

Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for records in PRC No.68 of 2019 on the file of the II Metropolitan Magistrate, Egmore relating to Crime No.212 of 2018 on the file of the first respondent police and quash the same.



Crl.O.P.No.14133 of 2019

For Petitioners

... Mr. P.T.Perumal
Assisted by
Mr.V.Vargees Amal Raja

For Respondents

... Mr.L.Baskaran,
Government Advocate (Crl.side)

ORDER

This criminal original petition has been filed to call for records in PRC No.68 of 2019 on the file of the II Metropolitan Magistrate, Egmore relating to Crime No.212 of 2018 on the file of the first respondent police and quash the same.

2.The case of the prosecution is that the first petitioner(A1) is an Investigative Journalist editing, printing and publishing the tamil magazine “Nakkheeran”. The second and third petitioners (A2 & A3) are Chief Special Reporters. The fourth petitioner (A4) is Joint publisher of the said magazine. The fifth petitioner (A5) is Chief Special Reporter of the said magazine. The accused persons A1 to A5 have entered into criminal conspiracy and published fake and derogatory news in the Nakkheeran magazine issues dated 20.04.2018, 02.04.2018 and 26.09.2018 about His Excellency, the Governor of Tamil Nadu with an intention to prevent him



CrI.O.P.No.14133 of 2019

from exercising his lawful powers and duties and the same amounts to overawing the Governor of Tamil Nadu, hence, prosecuted the accused for the offences punishable under Sections 124, 120-B, 505 (i)(b), 506(i) r/w 34 IPC.

3.The learned counsel appearing for the petitioners contended that in the comprehensive article, covering 9 pages, the petitioners have reported the opinions and statements made by various persons, who are one way or other connected to the activities of Professor Nirmala Devi and the University. Public opinion was also reported and the relevant parts are:

i.The Photographs of His Excellency were published.

ii. கவர்னர் பெயரால் கல்லூரி மாணவிகளுக்கு வலை. It never alleged that the Governor indulged in any sexual misbehavior. The main thrust of the article was that the Governor's name is misused.



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CrI.O.P.No.14133 of 2019

iii.The article points out the involvement of many political leaders.

iv.It shows the photos of the University staff protesting against prof.Nirmala Devi.

v.How Prof.Nirmala Devi was flaunting her photo-shoots with His Excellency Governor.

vi.The Statement of Prof.Nirmala Devi, that she made use of her contacts for making money.

vii.The opinion and fact statements of the office bearers of the college, where she worked.

viii.The said news article was of high public utility. It brought out a sex scandal where the Professor Nirmala Devi brainwashed and misused her girl students.

4.The said article was a as a matter of fact reporting. It never intended to hurt anyone. Not the least His Excellency Governor. It was



only a scandal exposure. The article is not a criminal intimidation, nor was it conducive to incite anyone to commit any offence against state or public tranquillity. The petitioners rely on the following case laws to justify that the impugned publication cannot be counted as an act of any offence.

a.2021 (15) Sec.35; Patricia Mukhim case

b.2021 (2) Crimes 361: Vinod Dua Case

c.2022 (1) MLJ Crl.550: Mathivanan Case

d.2021 (6) CTC 838: M.Maridar Case

e.Dr.Sambit Patra Case Law Finder id # 1830771

f.2007 Crl.L.J.1195: Subal Kumar Day

ii. Likewise, the news content of any publication either in print media or social media cannot be material for the offence under Section 506(i)

a.2015 (3) SCC Crl.132 : Manik Taneja Case

b.2010 (86) AIC 799 : Ram Kumar Misra

c.2007 Crl.L.J. 1204 : Tammineedi Case

d.2008 (1) JLJR 158 : Sunil Kumar Singh



Crl.O.P.No.14133 of 2019

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5.The learned Government Advocate (Crl.side) submitted that the accused are Publisher, Editor and Reporter of weekly magazine “Nakkheeran”. They conjointly made false and frivolous allegations against the Tamil Nadu State Governor and Publishing his photos and materials on their publication on the following dates:

1. April 08-10-2018
2. April 20-22-2018
3. April 23-25-2018
4. April 26 to 28 – 2018
5. April 29 to May 01.-2018
6. May 2 to 04 – 2018
7. May 5 to 7 – 2018
8. May 11-13 -2018
9. Sep 1 to 4 -2018
- 10.Sep 26 to 28-2018
- 11.October 10 to 12 – 2018
- 12.October 17 to 19 2018
- 13.October 20 23 – 2018
- 14.October 24 to 26

with an intention to paralyze the Governor's functions and interfering his daily activity to performing his official duty.

6.Based on the said frivolous publishing articles with photos of the



Governor, some of the political parties were formed mob nearby governor's

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Bungalow without prior permission from the authorities and disturbing both public and the Governor and Government authorities. The local Government unable to function, since the agitations raised by the groups by groups

1.Agitation made by Tamilzhar Vazvurimai Katchi (Velmurugan) on 18.04.2018 at Saidapet, Panagal Maligai, Chennai.

2.Communist Party (Ramakrishnan) on 25.04.2018. Near Saidapet Court and Taluk office Road, Saidapet, Chennai.

7.The investigating agency had obtained sanction order from government dated 04.02.2019 i.e., before taking cognizance by committal Court Magistrate, which would clearly established in the committal order dated 18.03.2019 made by the committal magistrate. On investigation, the facts reveals from the witnesses and documents would show that the accused had committed offences under Sections 124, 120 (B), 505 (i) (b),



Crl.O.P.No.14133 of 2019

506(1) r/w 34 IPC out of which 124 and 506(1)(b) are required sanction

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from the government. This is also properly obtained by the investigating agency. Hence, no question of quash the criminal prosecution and the accused are liable to face the trial before the appropriate forum.

8.I have considered the matter in the light of the submissions made by the learned counsel for the petitioners as well as the learned Government Advocate (Crl.side) for the respondents.

9.On perusal of the materials on record and the alleged publications dated 20.04.2018, 02.04.2018, 26.09.2018, it is seen that the publications were published improper activities of one Prof.Nirmala Devi working at Devanger Arts College under Madurai Kamarajar University. It is to be noted that the alleged three publications are not enclosed with the final report. Further, it is to be noted that in the complaint, no averment is contained that His Excellency the Governor of Tamil Nadu had read the frivolous publishing articles. No doubt, the photo of Governor is published in article and further, it is to be noted that there is no allegation because



of this frivolous publishing articles, the Governor was refrained from an exercising his constitutional duties and powers. Further, it is to be noted that there is no material to show that His Excellency the Governor of Tamil Nadu had met the accused persons at any point of time before or after the publication of the materials.

10. On perusal of the final report, the prosecution cited 30 witnesses. In the 30 witnesses, no witnesses cited who have participated in the public agitations. Further, it is also to be noted that all the agitations expressing the public grievance for taking action against the accused persons and not against His Excellency the Governor of Tamil Nadu. Section 124 of IPC runs as follows:

“124. Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.—Whoever, with the intention of inducing or compelling the President of India, or the Governor of any State, to exercise or refrain from exercising in any manner any of the lawful powers of such President or Governor,



CrI.O.P.No.14133 of 2019

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such President or Governor,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

11.The scope of Section 124(A)IPC was considered by the Constitution Bench of the Hon'ble Supreme Court in ***KEDAR NATH SINGH Vs. STATE OF BIHAR*** reported in ***(1962) SCR Supl. (2) 769***. In this case, the basic allegation in the FIR and the Statement of witnesses were required to be seen in the light of the law laid down by this Hon'ble Supreme Court in ***KEDAR NATH SINGH Vs. STATE OF BIHAR*** reported in ***(1962) SCR Supl. (2) 769*** and subsequent cases.

12.The requirement of offence of “sedition” is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the



Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State. In the instant case, the petitioners are accused being a journalist was entitled to expose the incident to the public knowledge and also entitled to analysis the functioning of the Government. Every journalist is entitled to protect under Sedition cases. This principle is upheld by the Supreme Court in *AIR 2021 SC page 3239* reported in *Vinod Dua vs Union Of India*. In view of the settled principle of law, the provision of Section 124 (A) IPC would not get attracted at all. Sections 505 (i) (b), and 506(i) IPC runs as follows:

“505. Statements conducing to public mischief.— (1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a)

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c)

shall be punished with imprisonment



which may extent to (three years), or with fine, or with both.”

***“506. Punishment for criminal intimidation.—
Whoever commits the offence of criminal
intimidation shall be punished with
imprisonment of either description for a term
which may extend to two years, or with fine, or
with both;***

***If threat be to cause death or grievous
hurt, etc.—and if the threat be to cause death or
grievous hurt, or to cause the destruction of any
property by fire, or to cause an offence
punishable with death or 8 [imprisonment for
life], or with imprisonment for a term which may
extend to seven years, or to impute unchastity to
a woman, shall be punished with imprisonment
of either description for a term which may
extend to seven years, or with fine, or with both.”***

13.A careful perusal of FIR and the statement of witnesses in the final report would show that none of the ingredients of Section 505(i) is available and there is no allegation in the complaint and the statement of



CrI.O.P.No.14133 of 2019

witnesses is directly affects on the security of State or public order. The

alleged publication contents the misbehaviour of Prof.Nirmala Devi and

misusing the name of His Excellency the Governor of Tamil Nadu. It was exposed to the public notice. Making of this publication would not constitute offence under Section 505(i) IPC and therefore, the ingredients of Section 505(i) and (b) are not available as well as the ingredients required for the offence under Section 506(i) IPC are also not available. In the instant case, no witnesses have stated that the petitioners/accused met His Excellency the Governor of Tamil Nadu. Therefore, no offence under Sections 505(i)(b) & 506(i) IPC is made out against the petitioners. The principle stated by the Hon'ble Supreme Court in the abovesaid decisions relied on by the petitioners are applicable to the fact of this case.

14.Further, the Hon'ble Supreme Court in *Manik Taneja and another Vs. State of Karnataka and another* reported in *2015 (3) SCC (Cri) 132* held that posting of derogatory comments on the Facebook page may not attract the ingredients of criminal intimidation under Section 503 IPC. In this case, the petitioners as a publisher under a bonafide belief,



Crl.O.P.No.14133 of 2019

after getting statement from many persons published about the alleged incident, it was within the permissible limit. Since no ingredients of the alleged offences are made out, in the circumstances of the case it would be unjust to allow the criminal proceedings to be continued against the petitioners. Hence, it is liable to be quashed.

15.In view of the above, criminal proceedings in PRC No.68 of 2019 pending on the file of the II Metropolitan Magistrate, Egmore relating to Crime No.212 of 2018 is hereby quashed. Accordingly, the criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

Internet : Yes/No

07.08.2023

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To

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D-4 Zam Bazaar Police Station,
Royapettah, Chennai
(In Crime No.212 of 2018)

2.The Deputy Secretary to Governor
and Comptroller,
Tamil Nadu Raj Bhavan,
Chennai.



Crl.O.P.No.14133 of 2019

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3. The II Metropolitan Magistrate, Egmore.

4. The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM ,J.

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Pre-delivery order made in
Crl.O.P.No.14133 of 2019
and
Crl.M.P.No.6850 of 2019



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CrI.O.P.No.14133 of 2019

07.08.2023