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WMP No.20785 of 2022 in
WP No.16154 of 2020

W.M.P.No.20785 of 2022
in
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THE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY ,J

ORDER
(Made by the Hon'ble Acting Chief Justice)

The City Public Prosecutor, High Court Campus, has filed this petition seeking leave for withdrawal of prosecution of C.C.No.32 of 2016 on the file of the Special Court I for Trial of Cases relating to Members of Parliament and Members of Legislative Assembly at Chennai as against the respondent/accused.

2. The sixth respondent herein, who is the President of Desiya Murpokku Dravida Kazhagam, has made alleged defamatory statement on 03.02.2016, which was published in Tamil Daily "Dinakaran" at page 4 of the Chennai issue on 04.02.2016 and circulated throughout the State. As the statement made by the sixth respondent was



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defamatory and attributable to the then Chief Minister of Tamil Nadu, Selvi J.Jayalalitha and was made deliberately to defame her reputation, sanction was accorded by the Government under Section 199(4)(a) Cr.P.C. to prosecute the sixth respondent, vide G.O.Ms.No.175, Public (Law and Order) Department, dated 12.02.2016.

3. Accordingly, a complaint in C.C.No.32 of 2016 was filed before the Principal District and Sessions Court, Chennai and thereafter, it was transferred to the Special Court I for Trial of Cases relating to Members of Parliament and Members of Legislative Assembly at Chennai, as the sixth respondent was a Member of Legislative Assembly.

4. Challenging the Government Order according sanction to prosecute him for the alleged defamatory statement made by him against the then Chief Minister of Tamil Nadu, the sixth respondent filed W.P.(Crl.) No.43 of 2016 before the Supreme Court and obtained



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an order of stay. Later, the said writ petition was withdrawn on 17.12.2021, pursuant to which, the stay got automatically vacated.

5. In the meanwhile, the Government, by G.O.Ms.No.558, Public (Law and Order-H) Department dated 10.08.2021, has withdrawn the sanction of prosecution accorded to prosecute the sixth respondent, along with other defamation cases pending in various Courts throughout the State against several political leaders and publishers on the ground that those cases were found to be instituted for political reasons. Hence, the Special Public Prosecutor filed a petition under Section 321, Cr.P.C. before the Special Court I, on 03.03.2022 for withdrawal of C.C.No.32 of 2016. As the leave of this Court is a mandate for such withdrawal, this petition has been filed.

6. Mr.Hasan Mohamed Jinnah, learned State Public Prosecutor appearing for the petitioner, bringing to the notice of this Court the dictum laid down by the Apex Court in **Ashwini Kumar Upadhyay v. Union of India** [W.P.(C) No.699/2016 dated 10.08.2021], submitted



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that though the Government has accorded sanction to withdraw the prosecution against the sixth respondent, they can withdraw the case pending before the Special Court I only with the leave of this High Court.

7. In this regard, it would be apt to refer to the dictum laid down by the Apex Court, in **Ashwini Kumar Upadhyay v. Union of India** [W.P.(C) No.699/2016 dated 10.08.2021], which reads as under:

"In view of the law laid down by this Court, we deem it appropriate to direct that no prosecution against a sitting or former M.P. / M.L.A. shall be withdrawn without the leave of the High Court in the respective suo-motu writ petitions registered in pursuance of our order dated 16.09.2020. The High Courts are requested to examine the withdrawals, whether pending or disposed of since 16.09.2020 in light of guidelines laid down by this Court."

8. In the light of the above dictum and in view of the fact that the Government has accorded sanction vide G.O.Ms.No.558, Public (Law and Order-H) Department dated 10.08.2021, to withdraw the



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prosecution against the sixth respondent and after considering the allegations in the criminal case, which is in the nature of defamation and considering the application of mind on the part of the Public Prosecutor, we grant leave to the petitioner to withdraw C.C.No.32 of 2016 on the file of the Special Court I for Trial of Cases relating to Members of Parliament and Members of Legislative Assembly at Chennai. Accordingly, this petition is allowed.

(T.R., ACJ.) (D.B.C., J.)
08.03.2023

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T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY,J
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