

Crl. O.P. No. 6317 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl. O.P. No. 6317 of 2024

and

Crl. M.P. Nos. 4647 & 4649 of 2024

C.Ve. Shanmugam

... Petitioner

Vs.

The Public Prosecutor,
Villupuram District and Sessions Court,
Villupuram.

.. Respondent

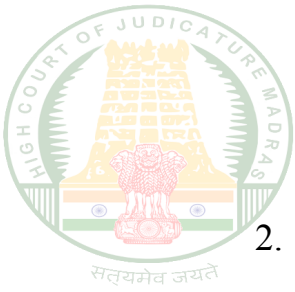
PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records and quash the proceedings against the petitioner in C.C. No. 01 of 2024 pending on the file of the Principal Sessions Judge, Villupuram.

For Petitioner : Mr. Vijay Narayan,
for Mr. M. Mohammed Riyaz

For R1 and R2 : Mr. A. Gopinath,
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C. No. 01 of 2024 on the file of the Principal Sessions Judge, Villupuram.



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2. On the complaint lodged by the respondent, the trial Court had taken

WEB COGNIZANCE for the offence under Section 499 of IPC punishable under Section 500 of IPC, alleging that the petitioner is a sitting member of the parliament (Rajya Sabha) and while staging a demonstration organized by this Party near Thiruvallur Statue, Villupuram on 20.07.2023, had delivered a speech defaming the Chief Minister of Taminadu and the Government of Tamilnadu in a derogatory manner, with an intention to cause loss of reputation of the Hon'ble Chief Minister of Tamilnadu in the discharge of his duties as Chief Minister of Tamilnadu. The said utterances are malicious and defamatory in nature and addressed to a gathering of 1000 persons over a public address system.

3. The gist of the portion of speech is that, they would not say that the present Chief Minister as a performing Chief Minister, that he is simply sitting in the office and he is a puppet minister who is activated by powerful forces, looting forces, the forces exploiting Tamil Nadu, that by calling the Government as Dravida Model M.K. Stalin is administering the Government of thieves and that is not a Dravida Model but the Model Government of thieves. Further, the Chief Minister who is the administering the Government does not know what is administration and does not know how to proceed. He does not know anything what is happening in the State and does not know anything



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about who is doing the things. He comes with a dhoti and a shirt in the morning and takes a tea and snacks that's all. The Government is administered only by the shadow Chief Minister. Therefore, it is highly objectionable defamatory, derogatory besides being false and harms and defames the reputation of the Chief Minister and the Government of Tamilnadu.

4. Mr. Vijay Narayan, the learned Senior Counsel appearing for the petitioner submitted that the petitioner had participated in a lawful protest staged by his party on 20.07.2023 near Thiruvallur Statue, Villupuram thereby condemning the rise of prices in goods, especially essential commodities. He had spoken in detail and the efficiency with which the scheme where reached to the people of Tamil Nadu during their regime. He had also drawn the contrast to show how badly the present Government had failed in lots of departments especially in controlling the immense rise in prices of essential goods and commodities in the State of Tamil Nadu.

5. In order to file a complaint, the respondent was accorded sanction by the Government in G.O.Ms.62 of 2024 dated 05.01.2024 under Section 199(4)(a) of the Code of Criminal Procedure, 1973. Immediately, thereafter the complaint has been filed. In fact, for the very same alleged speak, a FIR was



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registered in Crime No.239 of 2023 on 21.07.2023 for the offences punishable

under Sections 153, 294(b), 506(1), 504 of IPC on the file of the West Police

Station, Villupuram. It has been challenged before this Court in Crl. O.P. No.

1262 of 2024 and this Court, by an order dated 02.02.2024 stayed the further

proceedings. These cases are nothing but politically motivated one that are

completely unsustainable. In a democracy, it is the role of the opposition to

point out the failures of the Government and the shortcomings in a more

expressive manner so that the people in power are aware of the public

sentiments. The opposition has the responsibility to point out the failures of the

policies of the majority in power and be the voice of the people in wider public

platforms and the official gathering such as the legislative assembly.

6. Mr. A. Gopinath, the learned Government Advocate (Crl. Side)

appearing for the respondent submitted that the speech which was spoken by

the petitioner is clearly attract the offence under Section 499 of IPC and as such

the petitioner is liable to be punished for the offence punishable under Section

500 of IPC. The entire speech is mischievous and slanderous intended to maline

the reputation of the Hon'ble Chief Minister of Tamil Nadu and the

Government of Tamil Nadu. It is not a constructive criticism but intended to

cause the loss of reputation and to lower the reputation of Hon'ble Chief



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Minister in the estimation of others, intentionally and maliciously without any

good faith with a view to tarnish the good image of the Chief Minister and his Administration. Therefore, the Government of Tamilnadu had accorded sanction authorizing the respondent to prefer a complaint under Section 199(2) of Cr.P.C. There is absolutely no ground to quash the entire proceedings and it has to be gone into by full-fledged trial before the trial Court.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The petitioner had participated in a protest staged by his party on 20.07.2023 near Thiruvallur Statue, Villupuram condemning the rise in prices of goods especially essential commodities. The alleged defamatory portion of his speech as against the Hon'ble Chief Minister of Tamil Nadu as follows: -

9. On perusal of the entire speech spoken by the petitioner revealed that he had pointed out and criticized the Government for the surging prices of essential commodities and vegetables. He had also spoken about the various social issues that affect the general public due to the increase of prices of the



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essential commodities and the prevailing Government inadequacy to tackle the

same. The petitioner is being the member of opposite party of the State of Tamil Nadu, in a democracy the role of the opposition to point out the failures of the Government and the short comings to the general public. The right of freedom of speech and expression and the right to hold public meetings is enshrined in the Constitution of India and there are fundamental rights guaranteed to every citizens of India. The Article 19(1)(a) serves as a vehicle through in which dissent can be expressed. Therefore, the speech of the petitioner can only be construed as dissent and criticism about the present Government of Tamil Nadu.

10. It is also revealed that the inaction towards prevailing problem of inflation and rise in price of essential commodities and it is substantially affected the people. The Hon'ble Supreme Court of India in the case of ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*** reported in ***(2017) 10 SCC 1***, recognized and observed that right to dissent is essential part of the Constitution.

“266....Our Constitution places the individual at the forefront of its focus, guaranteeing civil and political rights in Part III and embodying an aspiration for achieving socio-economic rights in Part IV. The refrain that the poor need no civil and political rights and are concerned only with economic



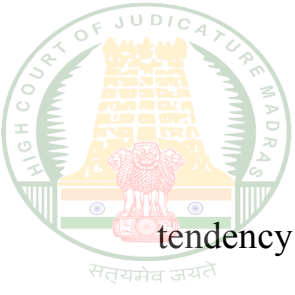
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well-being has been utilised through history to wreak the most egregious violations of human rights. Above all, it must be realised that it is the right to question, the right to scrutinise and the right to dissent which enables an informed citizenry to scrutinise the actions of the Government. **Those who are governed are entitled to question those who govern, about the discharge of their constitutional duties including in the provision of socio-economic welfare benefits. The power to scrutinise and to reason enables the citizens of a democratic polity to make informed decisions on basic issues which govern their rights.** The theory that civil and political rights are subservient to socio-economic rights has been urged in the past and has been categorically rejected in the course of constitutional adjudication by this Court.”

11. It is also held by the Hon’ble Supreme Court of India in the case of ***Kaushal Kishor v. State of Uttar Pradesh*** reported in (2023) 4 SCC 1, has observed as follows: -

“The right to dissent, disagree and adopt varying and individualistic points of view inheres in every citizen of this Country. In fact, the right to dissent is the essence of a vibrant democracy, for it is only when there is dissent that different ideas would emerge which may be of help or assist the Government to improve or innovate upon its policies so that its governance would have positive effect on the people of the country which would ultimately lead to stability, peace and development which are concomitants of good governance.”

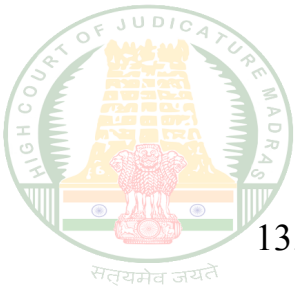
12. Thus, it is clear that the free speech of citizens of the country cannot be stifled by implicating them in criminal cases unless such speech has the



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tendency to affect the public order.

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13. In the case on hand, the respondent has failed to show cause that the

public order has been disrupted because of the speech made by the petitioner.

Further, the criticism is not as against the State, whereas it is on the failure of the individuals who are in charge of the affairs. Therefore, the above referred passage cannot be termed as *per se* defamatory in the state itself. Further, the speech spoken by the petitioner *prima facie* are not defamatory in nature and despite that the respondent has not even produced documentary evidence to show that there was any publication of such imputation and does not include any witnesses to show that the said imputation has lowered in the estimation of right thinking members of the public. The speech spoken by the petitioner must have been viewed from the eyes of the public. The petitioner's language may not be elegant and eloquent. However, distasteful that might be to the State, being the holder of a public office must be thick skinned and changed their policy decisions based on the criticism given by the opposite party.

14. It is relevant to extract the provision of under Section 499 of IPC.

“499. Defamation. - Whoever, words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said,



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except in the cases hereinafter excepted, to defame that person.

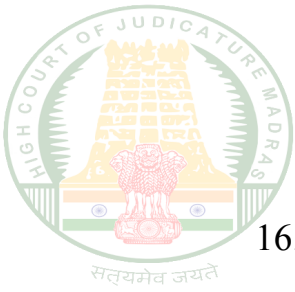
Second Exception – Public conduct of public servants. -

It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception – Conduct of any person touching any public question. - It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Therefore, the speech spoken by the petitioner is coming under the 2nd and 3rd exception and it is not amount to defamation to attract the offence under Section 499 of IPC.

15. The Hon'ble Supreme Court of India held in the case of **Guruji Shrihari Baliram v. Vithalrao**, reported in **1969 1 SCC 82, (Para 16)** while holding the speech given did not amount to a corrupt practice has observed that the politician must be thick skinned and it is for the electorate to judge those accusations. Further it has been seen that, whether the statements made by the person in a meeting can legitimately be set to be attributable or connected to be discharge of the public functions or the office of the Hon'ble Chief Minister.



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16. On perusal of the order of taking cognizance revealed that complainant present and sworn statement recorded. Prima facie material available to proceed against the accused. Hence, assigned number to this case and issued summons to accused on 15.04.2024. The Hon'ble Supreme Court of India and this Court repeatedly held that the steps taken by a Magistrate should reflect that the Magistrate has applied his mind to the facts of the case.

17. The order passed by the trial Court is cryptic and there is no indication on application of mind by taking cognizance and issuance of summons to the petitioner. Therefore, the cognizance of the complaint has been taken in routine manner without application of mind by the trial Court. Therefore, the complaint itself cannot be sustained and liable to be quashed.

18. However, the petitioner is being the Member of Parliament in Rajya Sabha from Tamil Nadu and he was a MLA and a Minister for 10 years, he should have responsibility by criticising the Hon'ble Chief Minister of Tamil Nadu and the Government of Tamil Nadu. Though the petitioner has right of freedom of speech and expression and the right to hold public meeting under Article 19(i)(a) of the Constitution of India with some restrictions, though he had spoken for good cause about the general public problem of inflation and



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rise in the price of essential commodities, the petitioner should not have spoken with hate speech about the Chief Minister of Tamil Nadu and the Government of Tamil Nadu. Therefore, the petitioner shall have to avoid hate speech while addressing in the public meeting.

19. Accordingly, the proceedings against the petitioner in C.C. No. 01 of 2024 pending on the file of the Principal Sessions Judge, Villupuram is liable to be quashed and accordingly quashed.

20. In the result, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral citation : Yes/No

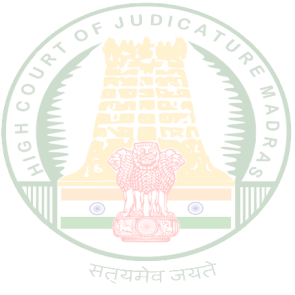
AT

To

1.The Principal Sessions Judge, Villupuram.

2.The Public Prosecutor,
Villupuram District and Sessions Court,
Villupuram.

3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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