

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 08.10.2021
Pronounced On : **08.11.2021**

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.14880 of 2019
and WMP.Nos.14865, 14867 and 14870 of 2019

Tmt.Kanimozhi Karunanidhi,
Member of Parliament (Rajya Sabha),
Dravida Munnetra Kazhagam,
No.14-1, 1st Main Road,
C.I.T. Colony,
Mylapore,
Chennai – 600 004.

... Petitioner

Vs.

1.The Public Prosecutor,
District Sessions Judge Court,
Villupuram.

2.The Principal Secretary to Government,
Public (Law and Order H) Department,
Government of Tamil Nadu Secretariat,
Chennai – 600 009.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari, calling for the records pertaining to
G.O.Ms.No.757, Public (Law and Order) Department dated 04.10.2018 on the
file of the second respondent and the consequential complaint dated

12.10.2018 filed by the first respondent registered as C.C.No.1 of 2019 before the Principal District and Sessions Judge, Villupuram together with the summons dated 30.04.2019 issued by the said Court and quash the same.

For Petitioner : Mr.P.Wilson, Senior Counsel for
M/s.P.Wilson Associates

For Respondents : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
Assisted by Mr.A.Damodaran,
Additional Public Prosecutor

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ORDER

This Writ Petition is filed to call for the records pertaining to G.O.Ms.No.757, Public (Law and Order) Department dated 04.10.2018 on the file of the second respondent and the consequential complaint dated 12.10.2018 filed by the first respondent registered as C.C.No.1 of 2019 before the Principal District and Sessions Judge, Villupuram together with the summons dated 30.04.2019 issued by the said Court and quash the same.

2.The petitioner is an accused in C.C.No.1 of 2019, facing trial for the offence under Section 500 IPC has filed this writ petition.

3.The contention of the petitioner is that the petitioner is a Member of Parliament of the DMK party, Secretary of the Women's Wing of the DMK party. The petitioner is a poet, writer and social activist. As a Member of Parliament and a Secretary of the Women's Wing, the leader of the DMK party wanted to sensitize the public about the gross failure of the Government in eradicating corruption and attending to the basic requirements of the people. Therefore, the DMK President decided to organize State Wide protests and peaceful demonstrations throughout Tamil Nadu on 18.09.2018, the petitioner was requested by the party to participate in the demonstration at Dindivanam, Villupuram District and to address the raising in corruption in the State Government especially in the areas on Highways, Public Works and also to highlight unemployment, civic issues etc., during the protest.

4.During the protest, the merits and the performance of the then Chief Minister was analyzed and criticised in the interest of public and in good faith. The gross failure of the Government, its corruption and non-adherence to their poll promises were listed out. The speech made by the petitioner was misquoted and the impugned complaint dated 12.10.2018, filed by the first respondent to prosecute the petitioner for defamation. The sanction accorded

under Section 199(4) of Cr.P.C. in G.O.Ms.No.757, Public (L&O-H) Department, dated 04.10.2018, passed mechanically, without application of mind and it is bad in law. No text of imputation found in the above said G.O., the complaint, if read on a whole, does not amount to any defamatory statement.

5.The first respondent relied on a hearsay statement of two persons said to have witnessed the petitioner's speech in the protest, filed the impugned complaint, the alleged speech of the petitioner extracted in the complaint, does not make out any offence under Section 499 of Cr.P.C. and by no stretch of imagination it pertain to conduct of public functions.

6.He further submitted that the first respondent merely lay a complaint, without examining the materials on record and get satisfied the requirement of law under Section 199(2) of Cr.P.C. The Lower Court failed to look into the materials produced, independently, thereafter taken the case on file. The cognizance order is mechanical and without any reason. In view of such fundamental defect, the prosecution cannot proceed. Further on the complaint, it is no where stated that due to the imputation caused by the

petitioner, the then Chief Minister's reputation is directly or indirectly lowered the moral or intellectual character of the then Chief Minister in estimation of others and the same was made in good faith to weed out corruption and not to defame.

7.He further submitted that from the year 2018, the case before the lower court is kept idle without any progress. The petitioner is the Member of Parliament and she hails from a respectable family with legacy. She is a political personality, made certain comments and alerted the public and others to be aware of the corrupt practice, which is a part of democratic process, which cannot be termed as defamatory.

8.The learned State Public Prosecutor submitted that on receipt of the G.O.Ms.No.757, dated 04.10.2018, the respondent City Public Prosecutor had filed a complaint invoking Section 199(2) of Cr.P.C. for offence under Sections 499 and 500 IPC. The petitioner has not denied the speech made on 18.09.2018. The transcribed defamatory portion of the speech is produced in the complaint. He further submitted that the Government had issued the G.O.Ms.No.674, Public (Law and Order-H) Department, 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.

9.Considering the rival submission and on perusal of the materials, it is seen that though the Government has passed the G.O.Ms.No.674, dated 10.08.2021, for withdrawal of the case, in view of the orders passed by the 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*, wherein certain guidelines issued 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 are involved to be seen. In the case of the sitting former MPs and MLAs directions issued that no prosecution case shall be withdrawn, without the lieu of the High Court.

10.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 Apex Court had drawn the guidelines with regard to the 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.

11.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 Pradesh* [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 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”).”

12.It is clearly stated that the offence of defamation committed attract Section 199(2) Cr.P.C., against the functionaries mentioned therein is to be seen whether 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.

13.On perusal of the G.O. and the complaint, it is seen that no such imputation made in discharge of public function of the then Chief Minister is found. The decision of the 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 **Crl.O.P.(MD).No.17415 of 2018, Crl.O.P.No.2453 of 2015 and Crl.O.P.No.23619 of 2018.**

14.The petitioner belongs to the opposition party and political statements have been made. The allegations made in the complaint are political in nature and not on personal level and no way pertain to the public functioning of the Hon'ble then Chief Minister. In view of the same, this Writ Petition is liable to be quashed.

15.Accordingly, this Writ Petition stands allowed and the G.O.Ms.No.757, Public (Law and Order) Department dated 04.10.2018, is hereby quashed, consequently, the proceedings in C.C.No.1 of 2019, on the file of the Principal District and Sessions Judge, Villupuram, is also quashed. Consequently, the connected miscellaneous petitions are closed. However, there shall be no order as to costs.

सत्यमेव जयते

08.11.2021

Index : Yes/No

Internet : Yes/No

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To

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- 3.The Principal District and Sessions Judge,
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- 4.The Public Prosecutor,
High Court,
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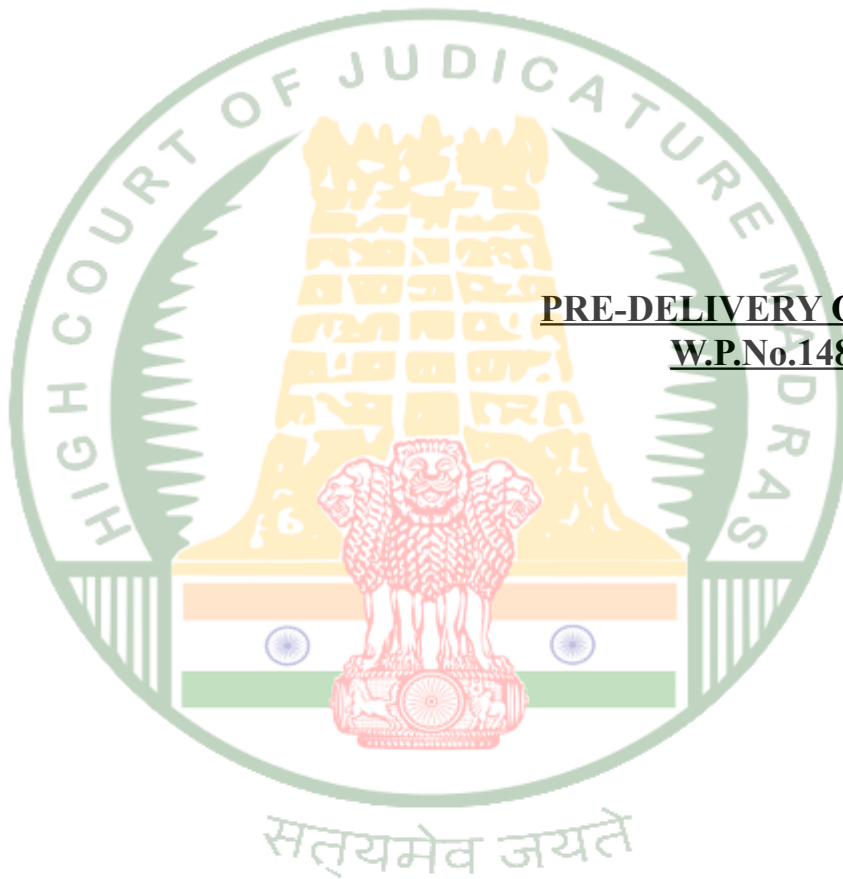


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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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