

Crl.O.P.(MD)No.17137 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.(MD)No.17137 of 2016

and

Crl.M.P.(MD)Nos.8481 and 8482 of 2016

Vijayadharani

... Petitioner

vs.

The Public Prosecutor,
Kanyakumari District,
at Nagercoil.

... Respondent

PRAYER: Criminal Petition filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in C.C.No.2 of 2016, on the file of the Principal District and Sessions Judge, Kanyakumari District at Nagercoil and to quash the same.

For Petitioners : No Appearance

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.2 of 2016, on the file of the Principal District and Sessions Judge, Kanyakumari District at Nagercoil.

2.Petition perused.

3.The learned Additional Public Prosecutor strongly opposed this petition stating that the prima facie material available to proceeds against this petitioner for criminal defamation.

4.A criminal complaint has been lodged against this petitioner alleging that she has defamed the then Chief Minister in a public meeting held on 27.09.2015.

5.The petitioner herein is a sitting member of the Tamil Nadu Legislative Assembly. She has expressed her anguish regarding the opening of TASMACH shops by the Government in the public meeting held at Karungal Santhai Ground at Nagercoil, held on 27.09.2015.

6.Aggrieved by the speech, the Public Prosecutor of the Kanyakumari District has presented the complaint on behalf of the Chief Minister under Section 199(2) of Cr.P.C. In the said complaint, it is claimed that, the Chief Minister is held in high esteem by section of the public irrespective of race, religion, caste or community. While so, the speech of the petitioner has harmed the reputation of the Chief Minister. The speech is found to harm the

Chief Minister in respect of conduct in discharge of her public function.

7.Contending that the speech made by her is no way near the definition of defamation and it was only the expression of her view about the affairs of the Government and as a member of Legislative Assembly and as political party representative, she has a right of expression guaranteed under the Constitution. The petitioner has contended that there is no malicious or defamatory or threat in her statement, which would attract Section 499 of IPC and she never had an intention to harm the reputation of the Hon'ble Chief Minister.

8.The offending portion of the speech given by the petitioner herein is extracted below for proper appreciation:-

“...மதுவை குடித்துக் குடித்து இறந்து போங்கள் என்று சொல்லும் முதலமைச்சர் நமக்கு தேவையா? பெண்கள் எல்லாம் சேர்ந்து குரல் கொடுங்கள். பெண்களுக்கு எதிராக ஒரு பெண் முதலமைச்சர் அமர்ந்திருக்கின்றார்கள், ஜெயலலிதா அவர்களைக் கேட்கிறேன், தமிழகத்திற்கு ஏதாவது நன்மை செய்து இருக்கிறீர்களா? எங்கள் உயிரைக் குடிப்பதற்கு குழந்தைகளை குடியுங்கள் குடியுங்கள் என்று குடிக்க வைத்திருக்கிறீர்கள்...”

“..விவசாயிகளுக்கு எதிராக சதி, வியாபாரிகளுக்கு எதிராகச் சதி என்று பல்வேறு சதிகளை நடத்திக் கொண்டிருக்கும் தமிழ்நாடு அரசாங்கத்தை எதிர்த்து நிற்க வேண்டிய நிலமையில் இருக்கிறோம்..”

9.The reading of the speech extracted above does not carry any sentence of defamation whatsoever. In democracy a fair criticism of the government functioning is the catalyst for better administration. Saint Thiruvalluvar, has said:

“இடிப்பாரை இல்லாத ஏமரா மன்னன்
கெடுப்பாரா ரிலானுங் கெடும்”

[*The careless king whom none reproves ruins himself sans harmful foes.*]

10.The Hon'ble Supreme Court in the case of ***Subramanian Swamy Vs. Union of India, Minstry of Law and others***, reported in **2016 (7) SCC 221**, while upholding the constitutional validity of Section 499 of IPC has also held that balancing the fundamental right is constitutional necessity. The right of freedom of speech and expression under Article 19(1)(a) subject to the restriction *vis-a-vis* right to reputation, which is facet of right under Article 21 ought to be balanced.

11.In this case, the alleged imputations squarely fall within the second exception in Section 499 of IPC, which reads as below:-

“Public conduct of public servants.—*It is not defamation to express in a 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.”*

12.The complaint, which is mere extraction of the legal provision does not disclose the *mens rea* to harm the reputation of the Chief Minister.

13.In view of the above, the impugned proceedings in C.C.No.2 of 2016 stands quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

03.06.2020

Index : Yes / No
Internet : Yes / No
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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal District and Sessions Judge,
Kanyakumari District at Nagercoil.

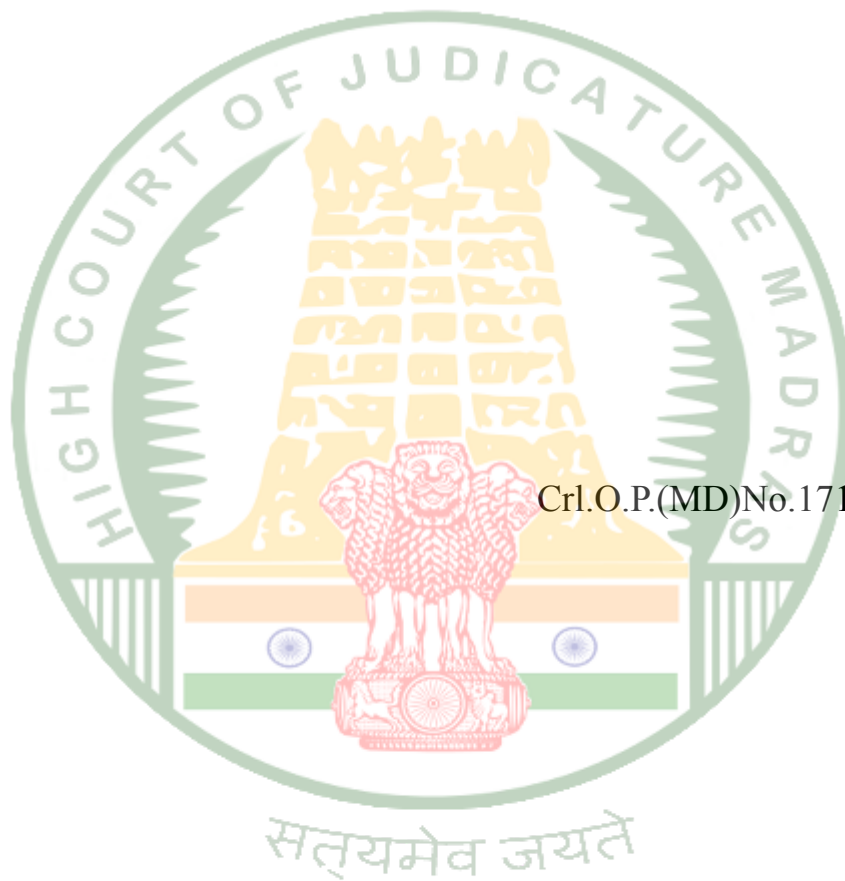
2.The Public Prosecutor,
Kanyakumari District,
at Nagercoil.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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DR.G.JAYACHANDRAN, J.

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