

'Right To Free Speech Does Not Give Right To Defame': Madras HC Restrains NGO From Making Derogatory Statements Against Ex-CM Edappadi Palaniswamy

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS
KRISHNAN RAMASAMY; J.**

OA.No.446 of 2022 in C.S.No.149 of 2022; 02.12.2022

Edappadi K. Palanisamy *versus* Arappor Iyakkam and others

This application has been filed, praying to grant interim injunction, restraining the respondents and their men, from in any manner releasing, circulating, publishing or indulging in making any kind of accusations/insinuations/allegations/circulation/uploading of articles/letters/ correspondence and/or giving press interviews and/or post any items, messages on social media containing any allegation as found or resembling in the document No.5 filed along with the plaint.

The brief case of the applicant/plaintiff is as follows:-

2. According to the applicant, he is the former Chief Minister of the State of Tamil Nadu, who had held the post between February, 2017 till May, 2021. Eversince the time he was elected to the Legislative Assembly in the year 2011 till May 2021. He had discharged his duties as the Minister for Highways and Minor Ports, apart from holding other portfolios post assuming office as the Chief Minister of Tamilnadu. He has been in politics for over four decades. He is presently the Interim General Secretary of the Opposition Party, All India Anna Dravida Munnetra Kazhagam (hereinafter called as AIADMK). He has successfully contested in the election and declared elected to the State Assembly five times i.e., in the year 1989, 1991, 2011, 2016 and 2021 from Edappadi Constituency in the State of Tamil Nadu. That apart, he had also contested to the parliamentary election and was elected to the Lok Saba from Tiruchencode in the year 1998.

3. It is further case of the applicant that the AIADMK is a recognized State Political Party having its headquarters at No. 226, Avvai Shanmugam Salai, Royapettah, Chennai-600 014 within the territorial jurisdiction of this Hon'ble Court. The political party AIADMK enjoys the reputation being only Political Party which has been elected successively to power in the Assembly Elections, i.e., in the years 2011 and 2016. The party AIADMK was founded by Dr. Puratchi Thalaivar M.G. Ramachandran, in the year 1972. Thereafter, it was led by Dr. Puratchi Thalaivi J. Jayalalithaa ever since the year 1989. The Party was elected in her leadership to power in the year 1991, 2001, 2011 and 2016. Owing to sudden illness of Dr. Puratchi Thalaivi J. Jayalalithaa she was hospitalised on 22nd September, 2016 at Apollo Hospitals, Greams Road, Chennai. She had succumbed to her illness on 5th December, 2016. Thereafter, one Mr. O. Panneerselvam was sworn in as Chief Minister on 6/12/2016. Subsequent to the Hon'ble Supreme Court pronouncing the verdict, in a case which was on appeal, on 14th February, 2017, the General Council of the Party had met and elected him as their Leader. The Government was formed on 16/02/2017 and he sworn in as the Chief Minister on the said date.

4. The applicant states that he enjoys an unblemished track record as politician. Never during his tenure as the Minister for Highways and Minor Ports which was held by him between the year 2011 and 2021 he was not alleged of any kind of favouritism or deviated practise. During his regime as Chief Minister, State of Tamil Nadu was the best performing

big state overall from the year 2018 to 2021. During his reign, he introduced various schemes like Kudimaramaththu Work, FAME India scheme and Amma Patrol in Tamil Nadu to ascertain the security of women and children in public places. The Tamil Nadu then became India's second-largest economy. In 2020, the study "States of the State" of India Today, the Government led by him had topped in 11 categories from a total of 12, including economy, tourism, infrastructure, inclusive development, law and order, along with entrepreneurship, cleanliness, environment, health, education and agriculture. Tamil Nadu had been chosen for this recognition for the third consecutive year. Under his governance, the State of Tamil Nadu was rated as the best governed state based on a composite index in the context of sustainable development according to the Public Affairs Index-2020 released by the Public Affairs Centre in Oct. 2020. He has also earned accolades and has been praised for his efficient administration during the corona virus pandemic. It is a matter of record that State of Tamil Nadu was one of the few states that did not register negative growth in the period of pandemic.

5. The applicant also states that he has been rendering service to the Society to the utmost satisfaction of one and all, particularly to the envy of other political parties. Due to his integrity, honesty and particularly owing to efficient administration of affairs of the State, he has invited wrath of many persons, particularly that of the disgruntled political rivals, including and not restricted to the opposition parties. He had been credited and praised for his service, particularly as the Chief Minister of Tamil Nadu. Even during his tenure of Minister and also during his stint as Chief Minister he had discharged my duties and responsibilities to the envy of others.

6. The applicant states that post the elections to the Legislative Assembly during the April/May 2021, the political party AIADMK became the Opposition Party and he was elected as the Leader of the Opposition in the State Assembly. Recently there have been several developments in the AIADMK Party and the General Counsel on 11.07.2022 had resolved to have a single leadership. Resolutions were passed in this regard and he was appointed as Interim General Secretary of the Political Party, AIADMK. Few of the disgruntled Members in the Political Party joining hands with the Respondents herein and with the present Ruling Party have schemed to lower his image amongst the general public. All these are evidently owing to the name and reputation earned by him and the goodwill enjoyed by him with the general public, particularly in the State of Tamil Nadu and his growth as a Politician.

7. According to the applicant, he was shocked to learn, on 28/07/2022, while he was at his residential office, by a news in Sun News Channel, that the first respondent has preferred a complaint making false and untenable allegations against him with the Directorate of Vigilance and Anti-Corruption, Chennai. He received various calls from his well-wishers enquiring about the same. Apart from the above, the first Respondent have uploaded the same in their social media websites attempting to widely circulate their act of preferring a complaint alleging corrupt practice in tenders at the time when the he was the Chief Minister of Tamil Nadu and holding the portfolio of Highways. The well-wishers, partymen and friends expressed their concern over the allegations. The Respondents have also uploaded the copy of the complaint in their website. The copy of which has been downloaded by him and filed as Document No.5 along with the Plaint.

8. It is stated that the respondents are indulging in the act of causing disrepute to his name, fame and reputation. The same is evident from the accusations and allegations made against him and their timing it is made. The insinuations are to attain cheap publicity

and popularity and to please individuals to whom the Respondents are obligated or are puppet in their hands. The falsity and ingenuity in the insinuations/allegations/accusations made in the communication filed as Doc. No.5 to the plaint are crystal clear and evident from the following fact that the tenders are invited by the Highways department only by e-tender mode. The Respondents knowing fully well the repercussion the communication would have and the injury he would suffer and the potential libel have, with malicious intentions and motivated with the desire to gain cheap publicity and pleasing certain individuals, have addressed the letter/correspondence/communication filed as Doc. No.5 to the Plaint. The contents of the correspondence are untrue, false, frivolous and damaging statements. Owing to the fact that he is the Leader of Opposition and a public figure in the limelight current developments in the party, the Respondents, acting in concert, have addressed/issued/circulated the letter/correspondence/communication making absurd and false statements knowing well the same would cause disrepute to his reputation. The letter/correspondence/communication has been addressed to Directorate of Vigilance and Anti Corruption and uploaded on their website. The same was followed by a press statement and carried widely in news. The intention of the Respondents is to disseminate the defamatory statements through the letter/correspondence/communication so as to cause disrepute and harm to the applicant. The statements are wrongful and amount to exposing him to ridicule. The Respondents' intention is to portray negatively on his character and cause disrepute to his integrity.

9. According to the applicant, the tenders are opened by a Tender Committee consisting of Superintending Engineer, Deputy Superintending Engineer, Head Draftsman and/or Draftsman. The said Tender Committee scrutinises and evaluates as to whether the bidders have met the prequalification. Financial bids of the bidders who have met the prequalification criteria alone are opened and evaluated. The proposal is sent by the Tender Committee to the Commissionerate of Tenders consisting of Deputy Secretary Finance and/or Joint Secretary Finance, two or more Chief Engineers as members who decide and award the Contract. The file is never brought to the Minister concerned. While this be so, the allegations that as Minister, he has a role to play is false and obviously exposes the Respondents' intention to make the accusations/insinuations.

10. The applicant further states that the Government in order to cater the roadways network to enhance the growth/development of the State, makes several measures to uplift the standard of roads, including construction of bridges, flyovers. Roads are widened to 4 lanes, 6 lane or multi lane. State of Tamil Nadu under the then Chief Ministership of Dr.Selvi J Jayalalitha had brought in a new system called 'Performance Based Maintenance Contract' (in short, 'PBMC'). Such type of contract was introduced first time in Pollachi division during year 2012-13. Thereafter the same was implemented in Krishnagiri division during the year 2015-16 and in Ramnad division also during the year 2015-16 and in Tirupathur division in the year 2015-16. Seeing the success of the set scheme/system, the same was introduced at the Virudhunagar division during 2017-18 and Palani division during 2018-19. Thereafter during 2019-20, PBMC was introduced in Sivagangai division.

11. When he was the Chief Minister of Tamilnadu, he had announced that "Strengthening and Maintenance of State Highways and Major District Roads" will be taken up under the PBMC system in Thanjavur Division during the Budget Session 2019 - 2020 on 15.07.2019. Thanjavur was known as cultural capital of Tamilnadu and quaint tourist city against the Hoary Chola Tradition to enhance tourism to attract State, National

and International level tourists. Geographically, Thanjavur district lies in the centre of Tamilnadu and is surrounded by Major districts of Thiruchirappalli, Cuddalore, Tiruvarur, Nagappattinam, Ariyalur and Pudukkottai. Thanjavur was selected in the second round of Smart City Challenge Competition on 20th September 2016. It is one of the 11 Smart Cities in the state of Tamilnadu. Therefore Thanjavur was required to be developed as city with resilient infrastructure, with sustainable environment. Therefore in tune with this principles, the PBMC System was proposed for Thanjavur District. Consequently an administrative sanction for an amount of Rs. 1947.24 Crores through G.O. (Ms) No. 40 Highways and Minor Ports (HQ1) Department dated 19.02.2020 was accorded. Tender notice was also issued through Tender notification 37/2019-2020/HDO/dated 25.02.2020. The procedures under the Tender Transparency Act, 2002 were scrupulously followed. Notification was published in Tamil Daily (State level editions), One National English daily (All India level editions), State tender bulletin and in the Indian Trade Journal. Also, the notice inviting tender was published with tender documents in the Online portal. The tender process has been implemented through Online e-tender system in the Highways Department from the year 2019 - 2020. In e-tender system once a tender is published, all the contractors will be intimated automatically by SMS to their registered mobile phone numbers from the portal. Therefore, all the contractors are informed about the tenders and they can participate in tender as they wish. Therefore, all the eligible State level contractors, National level contractors and International level contractors can participate in the tender like Major Projects works taken and executed by National Highways Authority of India, TNRSP wing. Since, the tender participation is only through Online, no contractors can be fixed by anyone or influence of any sort could be made in the tender process.

12. Further the applicant submits that the respondents have indulged in making false and defamatory allegations against him and to gain a cheap publicity and popularity joining hands with the rival political parties and disgruntled persons and also making false and derogatory allegations. The timing of addressing of the correspondence/letter and the factum that the same has been widely published in the media as well as uploading of the copy on their official website and circulating the same reveals their mala fide intentions and exposes their intention that the same are aimed at tarnishing his image. The Respondents in a calculated manner with an intent to cause disrepute to his name and fame and cause damage to his reputation, they have indulged in these activities. The allegations/contents in the correspondence/communication/letter addressed by the Respondents and uploaded in their Website and in their social media handles and news items are clearly intended to belittle me in the eyes of general public, family members, well-wishes, political parties and in the eyes of right thinking persons of the Society.

13. It is stated that while the Respondents have conspired and schemed the timing of their act at the time when he has been appointed as an Interim General Secretary and his election to the General Secretary. The act of the Respondents is clearly aimed at spoiling his name and credibility and to cause stigma and disrepute to him. The accusation therein apart from being false and frivolous, are aimed at maligning his character and reputation and to belittle him in the eyes of viewers/readers. The Respondents though claims to ensure transparency and accountability in governance, by their hurry in which the letter/correspondence/ communication had been typed and the allegations therein being contrary to the records and facts, added to the fact of uploading of the same in their website with the amount of publicity of the same was given is acting contrary to the Respondents so-called principles or objectives.

14. It is further stated that while the Respondents in their letter filed as Doc. No.5 hold that they were informed of alleged irregularities even during July, 2020, the reason for belated indulging in insinuations/allegations exposes the collateral purposes for which communication/letter has been addressed and reveals that the same is intended to disparage the good name, fame and reputation earned by me. It is evidently clear that the intentions of the Respondents are to cause disrepute to his name and reputation and lower his image in the eyes of the viewers.

15. It is further stated that the Dravida Munnetra Kazhagam had addressed a communication on 06.05.2022, to the Director of Vigilance and Anti-corruption, alleging irregularities in tender process and award of contracts. It is seen from the order passed by this Hon'ble Court on 18.06.2020 in W.P.No.8088 of 2020, on the petition filed recording the closure of the case, had permitted the petitioner therein to withdraw the petition. The same was carried by media as news. Thus, on similar lines, when the Respondents have addressed the communication/ letter/correspondence and uploading the same on their website and carrying it in social media, it is evident that the respondents' act is only to cause disrepute to him.

16. According to the applicant, there is no iota or semblance of truth in the accusations, allegations and publications made by the Respondents in their communication / letter / correspondence and the article uploaded in their website and carried in social media and the same are false and unsubstantiated. Any and all defences or plea of justification likely to be taken by the Respondent would fail, for the reason that allegations and accusations levelled and published against him, are subject matter of earlier complaints which were investigated and closed.

17. With the above averments, the applicant prays for grant of ad interim injunction as mentioned above.

18. The case of the respondents is that the complaint filed is vague and bereft of any material details as to what the defamatory content is. It is not stated as to which portions of the complaint and / or social media posts are defamatory of the applicant/plaintiff. The posts circulated by the respondents would squarely fall under the exceptions provided under Section 499 IPC. Though these exceptions are applicable for privy cases and the common law principles on defamation have been equally applied in the matters of civil defamation as well. The respondents further submitted that every allegation made in the complaint against the applicant was made after due diligence and is based on the documents publicly available and received under the Right to Information Act. Therefore, according to the respondents, every allegation is substantiated by relevant documents and the same has been incorporated into the complaint only after verifying the facts.

19. The respondents further submitted that the Performance Based Maintenance Contract (PBMC) System was framed and approved by the applicant in his capacity as the Minister of Highways. The same was announced by him in the year 2019 Budget Speech. According to the respondents, as per the policy of consolidation encouraged monopoly and cartelization of contractors, the maintenance contracts were awarded for a period of 5 years. The policy provided for awarding of maintenance and relaying contracts for even newly laid roads even though the design life of state highways and major District roads as per Indian Road Congress is 15 years. Further, the policy provided for awarding of contracts at inflated rates and the funds allocated for maintenance of contracts are on the higher side. The E-Tender norms were not followed, though the applicant submitted

that the entire process was through E-Tender. Therefore, the main allegations of the respondents are that (a) there is illegality and violation in the policy provided for estimates, awarding tenders under Performance Based Maintenance Contract (PBMC) for 5 years even for newly laid roads in the year 2017-2018 and 2018-2019 and providing administrative sanction of Rs.276 crores for laying roads in the 5th year of PBMC vide GO.Ms.No.40, Highways and Minor Ports Department, dated 19.02.2020. Further, the respondents contended that the policy provided for awarding of contracts at inflated rates with an average of Rs.2.33 crores per kilometre of road even though, the comparative rates in nearby districts were Rs.1.36 crores per kilometre and Rs.1.28 crores per kilometre. This is Rs.80 lakhs and one crore more than PBMC tenders awarded. According to the respondents, the tenders awarded to a firm called JSV Infra, even though the firm did not meet the required pre-qualification criteria on turnover and experience. The tenders were awarded to RR Infra and JSV Infra inspite of the respondents sending complaints to Highways and Finance Secretary on prefixing of the tender to these firms even before the tender was opened. The minimum period of 30 days were not given in the re-tender process. The Sivagangai PBMC was illegally awarded to SPK & Co., violating tender laws of advertisement and minimum time line of 30 days. Further, the respondents contended that the owner of SPK & Company is Mr.Nagarajan Seiyadurai, who is the business partner of the applicant/plaintiff's relative (sambandhi). However, the respondents submits that the allegations made in the complaint are genuine not without any material facts and the said complaint was filed before the authorities was circulated in the Face Book and Internet etc., is nothing wrong in circulating because the applicant has occupied the high position in the public. He has to bear even if it is untrue and better must know about all these facts In this regard, the learned counsel also referred to various citations rendered by this Court and the Hon'ble Apex Court, which are extracted as under:-

- (a) Kartar Singh Vs. State of Punjab, AIR 1956 SC 541
- (b) R.Rajagopal Vs. State of TN(1994) 6 SCC 632
- (c) R.Rajagopal Vs.J.Jayalalitha (2006) 2 LW 377
- (d) Charanjit Singh Vs. Arun Purie 1983(4) DRJ 80
- (e) Naveen Jindal Vs. Zee Media Corporation 2014 SCC Online Del 1369
- (f) Tata Sons Vs. Green Peace International 2011 SCC Online Del 466
- (g) Mother Dairy Processing Vs.Zee Telefilms ILR (2005) I Delhi 87
- (h) Sanj Daily Lokopchar Vs.Gokulchand Govindlal Sananda 2014 SCC Online Born 1492
- (i) Menaka & Others Vs. Arappor Iyakkam, (Order dated 04.06.2019 in OA.No.163/2019 & Batch).
- (j) Kailash Gahlot Vs.Vijendra Gupta, 2022 SCC Online Del 679
- (k) Secretary, Jaipur Development Authority Vs. Daulat Jain(1997) 1 SCC 35
- (l) Raub Australian Gold Mining Vs. Hue Shieh Lee
- (m) Taseko Mines Vs. Western Canada Wilderness Committee 2016 BSC 109
- (n) Greene Vs. Associated Newspapers Ltd (2004) EWCA Civ 1462

20. Heard Mr.S.R.Rajagopal for M/s.S.R.Raghunathan, learned counsel appearing for the applicant/plaintiff and Ms.D.Nagasila, learned counsel appearing for the respondents/defendants and perused entire materials available on record.

21. The law relating to the pre-trial injunctions is well settled in “**Bonnard Vs. Perryman (1891 B.735) page C.A. 269**”, wherein, it was held as follows:

“Thus, the right of free speech is one which is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunction.”

22. During the era of Ruling in the above cited case, **Bonnard Vs. Perryman**, -to justify the Court in granting an interim injunction, it must come to a decision upon the question of libel or no libel, before the Jury have decided whether it was a libel or not". Therefore, the jurisdiction was of delicate nature. Thus, it ought only to be exercised in the clearest cases, where any Jury would say that the matter of complained of was libellous, and where, if the jury did not so find, the Court would set aside the verdict as unreasonable. Subsequent to the **Bonnard Vs. Perryman** case, the Court of appeal in “**Associated News Paper Ltd (2005) QB 272**, the right of trial by Jury in defamation claims has been removed. Therefore, in the decision of Queen's Bench in the case of **Taveta Investments Limited vs The Financial Reporting Council and others**” reported in 2018 EWHC 1662 (Admin) in paragraph 97, it was held that a key plank of the justification for retaining the rule in **Bonnard Vs. Perryman** case had therefore, gone.

23. Further, it was held that in any event, when an issue arises in public law proceedings concerning, the alleged publication of defamation statements, the matter has always been resolved by a judge sitting alone and not by a jury. Even in the case of **Bonnard Vs. Perryman**, it was held that "Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunction". Therefore, in the event of libel is true, the Court has undoubted jurisdiction to grant injunctions at or before the trial in actions of libel and is not divested of the same.

24. In the present case, the main allegation levelled in the complaint lodged by the respondents dated 26.07.2022 and thereafter, circulating the same through various medias, as annexed in document no.5 in the plaint. A perusal of document no.5, it shows that circulating in the Face Book about the present complaint filed before the DVAC with a photograph of the applicant stating that there was a corruption. Narrating further, it was stated that there was a corruption of Rs.692 crores. The respondents would contend that the applicant having occupied public position, he has to bear any of the criticism and he will always come under the criticism of the public then only the public knew about that what is happening of the public offices and this rights cannot be criticized at any cost. According to the respondents, as long as if there is truth in the statements made by the respondents against the applicant, there is no bar for making such a statement in the public medias, of course, the plaintiff having occupied in the public office, has to expect and anticipate of those criticisms and has to accept it. However, respondent right of publication is not permissible when there is a statement and complaint made by the respondents is totally false, frivolous and only with an intention to bring dis-respect and

defame the integrity of the applicant with a malafide intention, to spread the rumors among the public so that defeat the applicant from further growth in his political career.

25. The learned counsel further submitted that even after the allotment of awarding of these contracts, the respondents made a complaint to the Secretary in the year of July 2020 itself. Thereafter, he has not pursued this complaint, while so, all of a sudden, he made a complaint on 26.07.2022, when the election of AIADMK Party was scheduled to be held on 11.08.2022, only to tarnish the image of the applicant, this complaint has been filed.

26. By considering the submissions and analyzing and perusing the other documents filed in support of the complaint, it appears that basically the allegations are made about the policy decisions for awarding PBMC contract by the Government and subsequent to the implementation and awarding the contract. As far as statements of illegality made by the respondents in the policy matter is concerned, the Apex Court in number of cases held that the Court has to restrain from the scope of judicial review of Government Policy. The Courts cannot act as the Appellate authority examining correctness, suitability and appropriate policy nor or the Courts advises to the executives of the matters of policy, which the executive entitled to formulate.

27. In the case of “**Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others**” (2007) 4 SCC 737 wherein, in paragraph nos.16 and 17, the Hon'ble Supreme Court has held as follows:

“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review [vide : Asif Hameed v. State of J&K - 1989 Supp (2) SCC 364; Shri Sitaram Sugar Co. Ltd., v. Union of India - 1990 (3) SCC 223; Khoday Distilleries v. State of Karnataka - 1996 (10) SCC 304, Balco Employees Union v. Union of India - 2002 (2) SCC 333), State of Orissa vs. Gopinath Dash - 2005 (13) SCC 495 and Akhil Bharat Goseva Sangh vs. State of Andhra Pradesh- 2006 (4) SCC 162].

“17. The Government's policy for National Film Awards is to restrict entry to only those films which have been certified by the Board for exhibition, that is films intended for public exhibition. The government is not interested in evaluating or giving an award to a film which may never be seen by the public, or at all events never be seen in an 'uncensored' form. Its object is to select the best from among those which the public can see and enjoy or gain knowledge. The said policy neither relates to nor interferes with the right of a film maker either to make films, or to apply for certificate or to exhibit the films. There is nothing illogical, unreasonable or arbitrary about a policy to select only the best from among films certified for public exhibition. We cannot, in judicial review, change that policy by requiring the Government to select the best from among 'films made' instead of 'films made and certified for public exhibition'. We, therefore, hold that the requirement that films should have been certified by the Central Board of Film Certification between 1.1.2005 and 31.12.2005 for entry for the 53rd National Film Awards is not an unreasonable restriction of any fundamental right of the respondents or other film makers.”

28. On a perusal of the above judgment, it is Cristal clear that the Court cannot act as an Appellate Authority examining the correctness, suitability and appropriateness of a

policy. Further, the Court cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and the wisdom or soundness of the policy, is not the subject of judicial review. However, it was held that there is nothing illogical, unreasonable or arbitrary about a policy to select only the best from among films certified for public exhibition. In the present case, the respondents mainly highlighted about illegalities and irregularities that had been alleged taken place in respect of the policy, i.e. PBMC. Of course, the respondents can criticize the policy and point out the defects or discrepancies of the policy. But the respondents, without any basis or reliable material to support their allegations, but by mere surmises and conjunctures, have indulged in disseminating the statements through the social media websites by substituting their own views. It is pertinent to note that the scheme/policy of PBMC and awarding tenders thereof, has been in vogue even prior to the applicant becoming the Chief Minister. Even according to the respondents, in the year 2020 itself after coming to know that the tenders were prefixed to certain contractors even before opening of bids, they brought the same to the notice of the Secretary, Highways Department as well as to the Secretary of Finance Department, but there was no action taken by the authorities. While so, it is quite surprising to note as to why the respondents have not filed a Writ Petition challenging the policy before this Court if at all the alleged statements made by the respondents are true and supported by documents. Even the unsuccessful bidders have not challenged the award of contracts to certain contractors without opening the bids.

29. The intention of the respondents in lodging the complaint before DVAC without resorting to filing a Writ Petition, challenging the policy vis-a-vis award of contracts to certain contractors, appears to be clear that the respondents are well aware of the settled position regarding the scope of judicial review by Writ Court in examining the public policy matters of the Government, is very limited and their attempts may not be successful in the event of filing the Writ Petition. Therefore, wisely, the respondents have lodged the criminal complaint before DVAC and taking advantage under the pretext of freedom of speech and in the name of fight against corruption, to make awareness in the public, the respondents indulged in disseminating statements through social media against the applicant at the timing when he was nominated as interim General Secretary of AIADMK Party, wherein the respondents intentionally and deliberately with the motive to defame the dignity and reputation of the applicant in the society, made highly defamatory allegations as set out in document no.5 that the applicant while he was a Minister, was involved in a scam of 692 Crores, etc., and also made criticisms about taking advantage of his political position as Minister for Road Transport and Highways, the applicant had indulged in allotting the tenders in favour of his close relatives, etc.,

30. This Court is well aware of the settled position that merely making a complaint to police authorities would not amount to defamation per se unless and until the FIR case was decided and that the suit for damages for defamation is premature till the proceedings which were set in motion, are rejected/quashed; and that once a person puts criminal law into action, the other party can not lodge and bring about a suit for defamation so as to stop those criminal proceedings.

31. In the present case, it is vehemently contended by the learned counsel for the respondents that the respondents who lodged a complaint alleging commission of corrupt acts by the applicant involving public funds, cannot be subjected to a tortious action for defamation and the present suit is not maintainable and thereby, the applicant is not

entitled for pre-trial injunction. It is also contended that mere lodging of a complaint with police cannot be considered to be a publication of a defamatory statement and that even if the criminal law is set in motion based on false complaint, then action for malicious complaint can be launched by the applicant after disposal of the criminal case wherein a specific finding is given to that effect. Therefore, according to the respondents, they have just set the criminal law in motion by lodging the complaint with DVAC, which cannot be construed that they were indulged in defaming the dignity and reputation of the applicant by defamatory statements against the applicant.

32. It is pertinent to note that as on date, the complaint lodged before the DVAC by the respondents has not been registered. The contentions so raised on behalf of the respondents that once a person puts criminal law into action, the other party can not lodge and bring about a suit for defamation are acceptable when the complaint was probed into and registered by the concerned police. Mere lodging the complaint with the police one side and making defamatory statements in the social media, causing disrepute or defaming the applicant, cannot be construed as fair act on the part of the respondents that they had no intention to bring any disrepute to the applicant. It is the vehement contention of the applicant that the complaint was lodged with DVAC without any basis or relevant material by substituting their own views so as to make a cognizable offence against the applicant and it is a frivolous complaint and based on that the applicant cannot be put to humiliation by way of uploading defamatory statements in social media, tarnishing the image of the applicant. Therefore, if the complaint lodged by the respondents is registered by the police setting the criminal law in motion, it can be safely concluded that the present suit filed for damages for defamation is premature and not maintainable until the complaint is rejected. Therefore, this Court prima facie is satisfied that the statements made by the respondents and uploading the same in social media are deliberate and intentional act to defame the dignity and reputation of the applicant in order to demoralize him in the society.

33. As far as the PBMC policy is concerned, this Court is of the view that when it is not even amenable to writ jurisdiction, where the Court cannot act as an appellate authority to examine the correctness, suitability and appropriateness of the policy of the Government and the scope of judicial review is very limited, while so, agitating the correctness of the policy by invoking criminal jurisdiction by the respondents, is not sustainable.

34. On a perusal of the complaint lodged by the respondents with DVAC highlighting the illegalities and irregularities in awarding the contracts to the selected contractors, misusing the official position by the applicant while he was a Minister for Highways and indulging in corruption of crores of rupees and favouritism, etc., it reveals that the respondents have downloaded various documents through Online and filed in bunch and extracted the same in the complaint and by making comparison of the same with other documents, the respondents substituted their own views in the place of decisions taken by the authorities. These substituted views may be useful for criticizing the implementation of the policy, but for filing a criminal complaint with allegations of illegalities and irregularities in the matter of awarding contracts to selected persons by misusing his official capacity by the applicant and deficiencies in implementation of the policy, etc., this Court is of the view that with the available material a criminal complaint may not be maintainable. Even assuming that there were violations committed in the matter of awarding the contracts, the tender proceedings can be set aside only by a Writ Court and not by a Criminal Court. However, knowing well aware of this fact, the respondents have deliberately approached the DVAC by way of criminal complaint only with a malice

intention to disrepute his name, fame and reputation of the applicant by uploading the defamatory statements in social media and further, if they approach the writ Court, they may not be successful and there would be no opportunity for them to defame the applicant.

35. Further, according to the respondents, as to how the illegal tender process is linked to the applicant alleging that S.P.K. & Co., in which, the tenders were awarded, was owned by one Mr. Nagarajan Seiyadurai, who is none other than the relative of the applicant (Sambandhi). It is not in dispute that from the year 2013 onwards SPK & Co., has been floated with tenders and in fact, no law prohibits from carrying on any business by any individual and Article 19(1) (g) of the Constitution of India provides Right to practice any profession or to carry on any occupation, trade or business to all citizens. Further, the said Nagarajan was one of the members in the Company. The Company is not an individual entity and mere a member in the Company or the Director of the Company, it cannot be attributed that he was shown favouritism in awarding the contracts to the company when there is no prohibition to carry on business or trade. Therefore, the allegations made by the respondents that there were illegalities taken place in awarding the contracts, prima facie appear to be baseless and not sustainable. The respondents also alleged that in respect of tenders of value above 2 Crores, the tender inviting Authority should provide 30 days time between the publication of notice inviting tenders in tender bulletin or newspapers and last date of submission of tenders as per Rule 20 (1) of Tamil Nadu Transparency in Tenders Rules, 2000, but this was violated in reducing the time. However, the Sub Clause (2) of same Rule 20 clearly provides reduction in the time stipulated as per sub-rule (1) which has to be specifically authorized by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing.

36. The respondents, though made allegations regarding the violation of tender norms in awarding the contracts to the selected contractors, but none of the respondents have participated in the tender process nor any other tenderer who participated the tender process and became unsuccessful, has come forward with a writ petition before this Court, challenging the irregularities that had taken place in tender process at the instance of the applicant and it appears that all the allegations said to have been made by the respondents based on their surmises and conjunctures, without any basis at all by substituting their own views in respect of the decisions taken by the policy makers and the tender committee, which are not sustainable. According to the applicant, before finalizing the tender process, the tender committee has complied with all requirements giving no scope to find out illegalities or irregularities. It is pointed out that the tenders were opened by a Tender Committee, consisting of Superintending Engineer, Deputy Superintending Engineer, Head Draftsman, which scrutinises and evaluates as to whether the bidders have met the pre-qualification and the financial bids of the bidders who met pre-qualification criteria alone were opened and evaluated. The proposal is sent by the Tender Committee to the Commissionerate of Tenders consisting of Deputy Secretary (Finance), two or more Chief Engineers as members who decide and award the contract. As such, the file was never brought to the Minister concerned since the business rules do not mandate the same and hence, the allegation levelled against the applicant that he misused his official capacity and the awarded the contracts to the selected contractors was done at his instance contrary to tender norms and thereby indulged in favouritism, are baseless and without substance. In this regard, the learned counsel for the applicant would draw attention of this Court to the Secretariat Instructions (Chapter I – General) contained in the **Tamil Nadu Government Business Rules and Secretariat Instructions, 1978**, particularly, Rule 3(1), which is extracted as under:

“3.(1) Subject to any Standing Orders Issued under Business Rule 22, the Secretary in each department shall circulate files to the Minister-in-charge or to other

Ministers in the following cases before issue of orders:(a) Cases where a question of policy is involved. (b) Cases relating to such scheme of new expenditure as may be specified by the Government from time to time.

(c) Cases where there is a difference of opinion between the Secretary concerned and the Head of a Department.

(d) Cases where the conduct of a Government Servant is involved and also petitions to Government relating to disciplinary cases from subordinate staff of Heads of Departments.

(e) Cases where rules are intended to be relaxed in favour of a Government servant; Provided that cases involving relaxation of rules need not be circulated to the Minister concerned if all the concerned departments agree.

(f) Cases relating to appointments (including list of approved candidates), promotion, postings, transfers and leave of Gazetted Officers.

(g) Cases where it is proposed to deviate from the advice of the Tamil Nadu Public Service Commission.

(h) All matters in which there is a difference of opinion between this Government and other State Governments or the Government of India.

(i) All other cases which the Secretary considers to be of importance for circulation to the Ministers:

Provided that -

(A) No case shall be circulated to the Ministers other than the Minister in-charge until it has been seen by the Minister in-charge and, if so required by the Finance Department, also by the Finance Minister;

(B) When ever it is proposed to issue orders by which the Secretary or any Gazetted Officer in his department of the Secretariat will be directly or indirectly benefited, the case shall be circulated through the Chief Secretary to the Minister in-charge before orders are passed.

(j) Cases in which materials have to be furnished to the Government of India for answering Lok Sabha and Rajya Sabha questions”

37. Therefore, the learned counsel would submit that the Secretary in each department would circulate the files to the Minister-in-charge in respect of cases mentioned above and after approval of the policy by the policy makers and budgetary approval, the file will directly go to the Secretariat for implementation of the policy and thereafter, no file will come to the Ministry. In the event any deficiencies are pointed out in implementation of the scheme or policy and for additional expenditure, the matter would be placed for reconsideration. However, any illegalities or irregularities taken place in implementation of the scheme/policy such as as alleged by the respondents in the matter of awarding contracts to selected bidders without opening the bids, etc., it is the matter for consideration by the concerned administrative officials of the Government and the Minister has no role to play in such matters. As already stated above, after evaluating the bids by the Tender Committee, proposal will be sent to the Commissionerate of Tenders consisting of Deputy Secretary Finance and 2 or more Chief Engineers as members, who decide and finalize the awarding of the contracts. Therefore, as rightly submitted by the learned counsel for the applicant, there is no role to play in the matter of awarding the contracts violating the tender norms and hence, there is no substance in the allegations

made by the respondents against the applicant, but only in order to tarnish the image of the applicant, the respondents intentionally made accusations/insinuations, which are defamatory in nature.

38. Though the learned counsel for the respondents by referring to Rule 3(1)(a) and (b) of the Tamil Nadu Government Business Rules and Secretariat Instructions, 1978, would contend that the applicant had to approve all new policies and expenditures of the Highways Department and such, after obtaining administrative sanction from the applicant, who was then Minister, G.O.Ms.No.40 dated 19.2.2020 was notified. According to the learned counsel for the respondent, it would mean that in the present case, the policy was approved and thereafter, for implementation of the same it has come to the Ministers for approval. However, the applicant submitted that these are all only for the new scheme, which was not already approved and acknowledged by the Ministers. But in the present case, the policy was already approved long back and it would not come to the concerned Minister at the stage of implementation. Therefore, even as per the Business Rules, this Court is of the prima facie view that Ministers are no way directly related at the implementation stage of the policy since the same would not come into their knowledge in terms of the Business Rules.

39. No doubt, it is settled law that the press should have the right to present anything which it thinks fit for publication. But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances which as giving an unrestricted freedom of speech and expression which would amount to an uncontrolled license. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalist. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty, it must be punished by Court of law. It is the duty of a true and responsible Journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be punished as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression. The above law would squarely applicable to the respondent as well.

40. In the present case, the respondents were well aware of the fact that the challenge to the policy of the Government were not amenable to the criminal jurisdiction and that it would be very difficult to succeed in the writ jurisdiction, they resorted to lodge a complaint with baseless allegations before the DVAC and by mere lodging the complaint, under the guise of criminal law was set in motion, the respondents started to disseminating the statements against the applicant in the social media, with an intention to tarnish his image and defame his reputation in the society. Furthermore, by downloading various documents and publications and thereafter, substituting their views in the place of decisions taken by the policy makers and the tendering authorities without any justifiable reasons, the respondents were under impression that the complaint would be amenable, but the fact remains that till the date the complaint lodged by the respondents has not been registered since there is no sufficient material is available to substantiate the allegations of the complaint, but taking the same as news item and publishing it in the Face Book and in TV channels as if the applicant involved in corruption in awarding the contracts in favour of the selected contractors, while as per the Business Rules as discussed supra, there was no role to play by the Minister in the matter of implementation of any scheme or policy

after approving the same by the policy makers and also there is no role to play for the applicant being Minister at the material time in the matter of finalizing the tender process and thus, it is clear that the applicant cannot be held responsible either for implementation of the policy or in the matter of finalizing the tender process in terms of the Business Rules. While so, by lodging a frivolous complaint, the intention of the respondents is only to defame and bring dis-reputation to the political career of the applicant and nothing more than that which prima facie establishes that the entire complaint has been a formality with a motive to defame the name of the applicant and this Court is constrained to arrive this conclusion for the reasons that the respondents were well aware that challenge to the policy of the government under the criminal jurisdiction is not at all sustainable and all the allegations levelled against the applicant by substituting their own views taking support of certain documents downloaded through Online, are all baseless and devoid of substance and perhaps it led to non-registration of the complaint by the concerned authorities on the ground that the complaint might not have disclosed any cognizable offence.

41. Reputation is an integral and important part of the dignity of the individual and it also forms the basis of many decisions in the democratic society which are fundamental to its well being. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed, choice, the electorate needs to be able to identify the good as well as the bad.

42. In fact, right to privacy and dignity as guaranteed under Article 21 of the Constitution, is a fundamental right. Right to Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India is subject to reasonable restrictions enumerated under Art. 19(2) of the Constitution of India. Art. 19(2) of the Constitution of India reads thus:-

"Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence"

43. Thus, the Right to Freedom of Speech and Expression is not absolute right and subject to reasonable restrictions.

44. In a judgment of "***Subramanian Swamy v. Union of India***" reported in (2016) 7 SCC 221, the Hon'ble Apex Court held that the reputation of an individual is a basic element under Article 21 of the Constitution and balancing of fundamental rights is a constitutional necessity. Right to free speech does not give a right to an individual to defame others. The citizens have a correlative duty of not interfering with the liberty of other individuals since everybody has a right to reputation and right to live with dignity. It is well settled that in a democratic set up, no one has right to disparage the reputation of another.

45. The working of a democratic society depends on the members of that society, being informed not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society and should form no part of such a society. There is no duty to publish what is not true: there is no interest in being misinformed.

46. Normally, the Court will hesitate to grant the pre-trial injunction in defamation cases because the defamation would be compensated by damages once the statements/publications are proved as defamatory and caused damage to the reputation of the aggrieved person. In the present case, what the applicant sought was that it was a defamation caused by the respondents by uploading the baseless accusations/insinuations in the Face Book and also continuing to publish the same again and again and thereby, causing much damage to his reputation. Therefore, the applicant sought for pre-trial injunction since the respondents made frivolous complaints against the applicant.

47. Any baseless publications if made against the political persons defaming their reputation, it would have considerable impact throughout their career as politician, who later strives hard to get confidence among the public who would form a bad opinion by way of such defamatory publications. Making criticisms towards the concerned Minister regarding the policy and failure of its implementation through the Press is permissible, but making a criminal complaint against the Minister with false and baseless allegations while as per Business Rules, there is no role to play by the Minister for implementation of the policy or deficiencies in tender process, etc., and uploading the same in social media, in the opinion of this Court, would *prima facie* tarnish the personal and professional reputation of the applicant in the society.

48. To sum up,

- i) The applicant is the former Chief Minister of the State of Tamil Nadu and presently, he is the Interim General Secretary of the Opposition Party (AIADMK) and has been rendering service to the public for the decades together and earned high reputation in the society;
- ii) The respondents have lodged a complaint before the DVAC and uploaded the same in social media websites, which was followed by a press statement and carried widely in news with *prima facie* baseless allegations of corrupt practice in the matters of awarding tenders in favour of his relative and selected tenderers and thereby caused disrepute to his name in the society;
- iii) The respondents highlighted the illegalities and irregularities in respect of the policy of the Government, i.e. PBMC and awarding tenders thereof, but it is not in dispute that the said policy has been in vogue even prior to the applicant becoming the Chief Minister, but admittedly, the respondents have not challenged the policy by way of Writ Petition;
- iv) The scope of judicial review by Writ Court in examining the public policy matters of the Government is very limited and knowing well that challenge to the policy, i.e. PBMC is not amenable to writ jurisdiction and they may not be successful in writ proceedings, deliberately they resorted to lodging the criminal complaint so that they can make wide publication in social media and cause disrepute to the applicant and tarnish his image in the society;
- v) The respondents have downloaded various documents from Websites and filed in bunch and extracted the same in the complaint and by making comparison of the same with other documents, the respondents substituted their own views in the place of decisions taken by the tender processing authorities and made untenable allegations that the applicant indulged in corruption of crores of rupees and favouritism, etc. only with a malice intention to disrepute his name, fame and reputation of the applicant by uploading

the defamatory statements in social media, that too at the timing when the applicant has been appointed as an Interim General Secretary of AIADMK;

vi) As regards the implementation of the policies of the Government and contractual matters, etc., the Government Officials, viz., Executives of the administration will decide and take appropriate decisions wherein, the Ministers have no role to interfere with their administrative functions by virtue of Tamil Nadu Government Business Rules and Secretariat Instructions, 1978.

vii) Article 19(1) (g) of the Constitution of India provides Right to practice any profession or to carry on any occupation, trade or business to all citizens, as such, the individual Mr. Nagarajan, who is alleged to have been awarded contracts showing favouritism by the applicant is baseless as absolutely there is no role to play by the applicant being Minister at the relevant point of time in the matter of finalization of tenders;

viii) As on date, the complaint lodged before the DVAC by the respondents has not been registered since there is no sufficient material is available to substantiate the allegations made therein. Mere lodging the complaint with DVAC one side and making defamatory statements in the social media, causing disrepute or defaming the applicant, can be construed as deliberate act on the part of the respondents;

ix) Right to free speech does not give a right to an individual to defame others. The citizens have a correlative duty of not interfering with the liberty of other individuals since everybody has a right to reputation and right to live with dignity. It is well settled that in a democratic set up, no one has right to disparage the reputation of another.

x) This Court, *prima facie* is satisfied that the statements made by the respondents are defamatory in nature and uploading the same in social media are deliberate and intentional act to defame the dignity and reputation of the applicant in order to demoralize him in the society.

49. In the light of the above discussion, this Court finds that a *prima facie* case is made out and balance of convenience lies in favour of the applicant and since the respondents have been continuing to publish/upload the accusations/insinuations in social media, irreparable injury would be caused if interim injunction is not granted. In such view of the matter, this Court feels it would be appropriate to restrain the respondents from making further such derogatory statements, by way of interim injunction. Since this Court arrived at the above conclusion, there is no need to refer other citations relied upon by the parties.

50. In the result, the Original Application is allowed and interim injunction is granted, restraining the respondents and their men, from in any manner releasing, circulating, publishing or indulging in making any kind of accusations/insinuations/allegations/circulation/ uploading of articles/letters/ correspondence and/or giving press interviews and/or post any items, messages on social media.