

W.P.Nos.879, 882, 884
& 887 of 2024

In the High Court of Judicature at Madras

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Reserved on :	Delivered on :
18.1.2024	24.1.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.879, 882, 884 & 887 of 2024
& WMP.Nos.907, 910 to 916, 918 & 919 of 2024

C.Ve.Shanmugam, B.A., B.L.,
Member of Parliament,
Villupuram-1.

...Petitioner in
all the WPs

Vs

1.The State of Tamil Nadu, rep.
by the Secretary to Government,
Public (Law & Order-H)
Department, Secretariat,
Fort St.George, Chennai-9.

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

...Respondents in
all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records pertaining to G.O.Ms.Nos.573, 574, 748 & 537 of 2023 respectively dated 26.9.2023, 02.9.2023, 30.11.2023 and 02.9.2023 passed by the first



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respondent and the consequential complaints respectively in C.C.Nos. 3, 2, 4 & 1 of 2023 on the file of the learned Principal Sessions Court, Villupuram.

For Petitioner
in all the WPs : Mr.Vijay Narayan, SC for
Mr.M.Mohamed Riyaz

For Respondents
in all the WPs : Mr.P.S.Raman, AG assisted by
Mr.K.M.D.Muhilan, GA (Crl.Side)

COMMON ORDER

The issues involved in all these writ petitions are common. Hence, the basic issues raised will be answered and applied to the facts of each case and the writ petitions are disposed of by this common order.

2. These writ petitions have been filed challenging the respective Government Orders passed by the first respondent according sanction to the Public Prosecutor for making complaints under Sub-Section (2) of Section 199 of the Criminal Procedure Code (for short, the Code) against the petitioner for the alleged defamatory speech made against



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the Hon'ble Chief Minister, which constitutes an offence under Section 499 of the Indian Penal Code (for brevity, the IPC), punishable under Section 500 of the IPC and the consequential complaints filed before the learned Principal Sessions Judge, Villupuram, which have been taken cognizance and in which, summons have been issued to the petitioner.

3. Heard the learned Senior Counsel appearing on behalf of the petitioner in all the writ petitions and the learned Advocate General assisted by the learned Government Advocate (Crl.Side) appearing for the respondents in all the writ petitions.

4. The learned Senior Counsel appearing on behalf of the petitioner submitted that the impugned Government Orders have been issued without any application of mind and are, per se, arbitrary and illegal. He further submitted that the petitioner, as a member belonging to the opposition party, criticized the Government headed by the Chief Minister on certain important issues, that such criticism cannot be prevented by initiating defamation cases and that it will



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tantamount to throttling the voice of the opposition. He also submitted that there is absolutely no nexus in the statements made by the petitioner with the discharge of public functions/official duties of the Hon'ble Chief Minister and that therefore, the requirements under Sections 199(2) and 199(4) of the Code have not been fulfilled.

5. In order to substantiate the above submissions, the learned Senior Counsel appearing on behalf of the petitioner relied upon

*(i) the judgment of the Apex Court in the case of **K.K.Mishra Vs. State of Madhya Pradesh [reported in 2018 (6) SCC 676];** and*

*(ii) the judgment of a learned Single Judge of this Court in the case of **Thiru N.Ram, Editor in Chief, Printer & Publisher 'The Hindu' Kasturi & Sons Ltd. Vs. Union of India rep.by its Secretary to Government, Ministry of Law & Company Affairs [reported in 2020 SCC On-Line Madras 1023].***

6. Per contra, the learned Advocate General appearing on behalf



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of the respondents submitted that in each Government Order that was issued, the first respondent has taken into account the material placed by the Inspector General of Police, Intelligence, SBCID, Chennai and found that it contained imputations, which are, per se, defamatory against the Hon'ble Chief Minister in the discharge of his public functions, that the same is clearly reflected in the respective Government Orders themselves and that there is absolutely no ground to interfere with the impugned Government Orders.

7. The learned Advocate General further submitted that in each case, the imputations were highly scandalous and defamatory, that it was directed against the Chief Minister in the discharge of his official functions, that the same is evident on a mere reading of those imputations extracted in the complaints, that there is a prima facie material to proceed further with the complaints and that there are absolutely no grounds to interfere with the complaints at this stage. He concluded his arguments by submitting that the voice of the opposition in airing their opinion on various issues must not cross the threshold of decency and that if scandalous allegations are permitted



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to be made in the guise of raising the voice of the opposition, it will bring down the stature of the office of the Hon'ble Chief Minister and that the same cannot be permitted. Hence, he ultimately sought for dismissal of these writ petitions.

8. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The following issues arise for consideration in these writ petitions :

(a) Whether the respective Government Order issued in each case suffers from non application of mind and hence, the respective sanction accorded through the impugned Government Orders is liable to be interfered by this Court ?

(b) Whether the allegations/imputations made by the petitioner are defamatory ? and

(c) Whether there is a direct and reasonable nexus between those defamatory statements in the discharge of public functions



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of the Hon'ble Chief Minister ?



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10. It will be more appropriate to commence the discussions in these cases by straight away taking note of the judgment of the Apex Court in **K.K.Mishra's** case wherein the relevant portions are extracted as hereunder :

"6. The aforesaid three statements mentioned in the order dated 24.6.2014 granting sanction/permission are as follows:

'1. 19 amongst the Transport Inspectors appointed in Madhya Pradesh are from the in-laws house Gondiya (Maharashtra) of Chief Minister Shivraj Singh Chouhan.

2. Conversation has been made with the accused persons of the Vyapam Scam from the mobile of Sanjay Chouhan, Son of Phoolsingh Chouhan-Mama of the Chief Minister Sh. Shivraj Singh Chouhan.

3. Conversation has been made from the Chief Minister's house by an influential woman through 139 phone calls with the accused of Vyapam Scam Nitin Mahendra, Pankaj Trivedi, Lakshmikant Sharma.'

7. Section 199(2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for the 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 functionary or public servant concerned, as may be. The prosecution under Section 199(2) Cr.P.C. is required to



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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 [AIR 1961 SC 387 : 1961 (1) Cr.L.J. 566] [AIR pp. 391-92, para 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.

9. P.C. Joshi (supra), however, specifically dealt with the provisions of Section 198-B of the Code of



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Criminal Procedure, 1898 (the old Code) which are pari materia with the provisions of Section 199 of the Cr.P.C. (the new Code).

10. *The above would require the Court to consider as to whether the statements made by the appellant - accused in the Press Conference which have been taken note of in the order dated 24.6.2014 granting sanction/permission can legitimately be said to be attributable or connected with the discharge of public functions of the office of the Hon'ble Chief Minister. In other words, whether the said statements have any reasonable nexus with the discharge of Official duties by the Hon'ble Chief Minister.*

11. *The problem of identification and correlation of the acts referred to in an allegedly defamatory statement and those connected with the discharge of public functions/official duties by the holder of the public office is, by no means, an easy task. The sanction contemplated under Section 199(4) Cr.P.C. though in the opposite context i.e. to prosecute an offender for the offences committed against a public servant may have to be understood by reference to the sanction contemplated by Section 197 Cr.P.C. which deals with sanction for prosecution of a public servant. There is a fair amount of similarity between the conditions precedent necessary for accord of sanction in both cases though the context may be different, indeed, the opposite.*

12. *While dealing with the requirement of sanction under Section 197 Cr.P.C., this Court in Urmila Devi vs. Yudhvir Singh [2013 (15) SCC 624 : 2014 (5)*



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SCC (Cri.) 470] had taken the following view which may have some relevance to the present case : (SCC para 651 para 59)

'59. The expression 'official duty' would, in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 Cr.P.C. may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code.' (emphasis in original)

13. If the allegedly defamatory statements, already extracted, in respect of which sanction has been accorded to the Public Prosecutor to file the complaint against the appellant under Section 199(2) Cr.P.C. by the order dated 24.6.2014 are to be carefully looked



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into, according to us, none of the said statements, even if admitted to have been made by the appellant, can be said to have any reasonable connection with the discharge of public duties by or the office of the Hon'ble Chief Minister. The appointment of persons from the area/place to which the wife of the Hon'ble Chief Minister belongs and the making of phone calls by the relatives of the Hon'ble Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon'ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Sections 199(2) and 199(4) Cr.P.C. will not be available. It is the remedy saved by the provisions of Sub-Section (6) of Section 199 Cr.P.C. i.e. a complaint by the Hon'ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to."

11. A careful reading of the said judgment of the Apex Court shows that Section 199(2) of the Code carves out a special procedure with regard to initiation of a prosecution for the offence of defamation committed against a public servant/constitutional functionary. To initiate such a complaint on behalf of a public servant/constitutional functionary, there must be a valid sanction of the Competent Authority under Section 199(4) of the Code. Therefore, Sections 199(2) and

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199(4) of the Code envisage a departure from the normal procedure that is followed for initiation of a complaint before the Magistrate by an aggrieved person alleging the offence of defamation. The Apex Court, in the said judgment, observed that the problem of correlation of the acts, which are allegedly defamatory and those connected with the discharge of public functions of the public servant/constitutional functionary, is, by no means, an easy task. The Apex Court has cautioned that the Court must carefully look into the allegations/imputations and see if they have any nexus with the discharge of public duties by the public servant/constitutional functionary and only then, the complaint filed by the Public Prosecutor on behalf of the public servant/constitutional functionary is maintainable.

12. There is a four step process, which should be adopted in a case of this nature and they are :

(a) Whether the offence of defamation has been committed against the public servant/constitutional functionary ?

(b) Whether a proper sanction has been accorded by the Competent Authority under Section 199(4) of the Code ?



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(c) Whether the statements/imputations made constitute defamation as defined under Section 499 of the IPC ? and

(d) Whether the defamatory statement has a direct and reasonable nexus with the discharge of public functions of the public servant/constitutional functionary.

13. Only if all the above four steps are complied with, the private complaint instituted under Section 199(2) of the Code can be permitted to be proceeded further.

14. In the instant case, the learned Senior Counsel appearing on behalf of the petitioner has primarily questioned the sanction accorded by the first respondent by issuing the respective Government Orders on the ground that there is a non application of mind. It was further contended that the first respondent is expected to apply his mind on the imputations and relate it to the discharge of public duties of the Hon'ble Chief Minister and that such application of mind must be reflected in the respective Government Orders. He also submitted that the first respondent merely stated that the imputations are, per se,



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defamatory against the Hon'ble Chief Minister in the discharge of his public functions and the first respondent has not assigned any reasons as to why he came to such a conclusion.

15. It must be borne in mind that a sanction accorded by the Competent Authority need not be in the form of an order or a judgment passed by a court. The only requirement is to see if the sanction order reflects application of mind. To test such application of mind, the sanction order must state as to what material was relied upon to come to a conclusion to accord sanction under Section 199(4) of the Code. It is not necessary for the Sanctioning Authority to extract all the imputations in the sanction order and specifically connect it with the discharge of public functions of the public servant/constitutional functionary. If that requirement is imposed, it will virtually amount to passing an order or a judgment and such an onerous task is not contemplated under Section 199(4) of the Code.

16. In each of the Government Orders, the first respondent placed reliance upon the individual letters received from the Inspector



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General of Police, Intelligence, SBCID, Chennai. These letters specifically provided the imputations/statements made by the petitioner. Hence, there was a material placed before the first respondent to go through the same and to take a decision to accord sanction to the Public Prosecutor for making the complaints under Section 199(2) of the Code. The Government Orders that have been put to challenge in all these writ petitions, fulfil the requirement of application of mind on the part of the first respondent and this Court does not find any ground to interfere with the impugned Government Orders.

17. While testing an order, the reasons assigned in the order alone must be taken into consideration by the Court. The Court cannot assume the position of the Authority to justify the order and the Court has to understand the purport of an order only based on what is found in the order in terms of reasoning. It is also too well settled that an order cannot be improved by way of filing an affidavit and the order has to be tested only based on what is contained in the order.



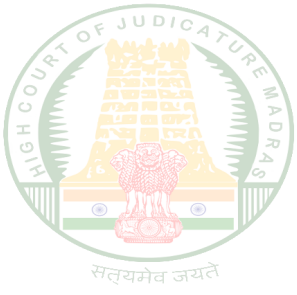
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18. While applying the above principles, this Court finds that the first respondent applied his mind while issuing the respective Government Orders based on the materials available in terms of the respective letters of the Inspector General of Police, Intelligence, SBCID. In view of the same, there is no ground made out for interfering with the impugned Government Orders, which accorded sanction to the Public Prosecutor to make complaints under Section 199(2) of the Code. The alleged imputations have been made against the Hon'ble Chief Minister. There cannot be any quarrel with the fact that the Hon'ble Chief Minister is a Constitutional Functionary and therefore, this requirement is also fulfilled in all these cases.

19. The other two requirements that have to be tested in these writ petitions are

- (i) whether the imputations/statements are defamatory ? and
- (ii) whether such defamatory statements are attributable or connected with the discharge of public functions of the office of the Hon'ble Chief Minister.



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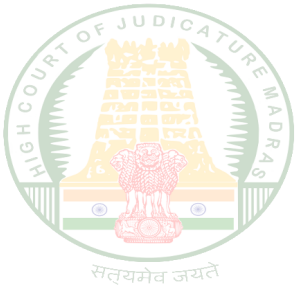
20. In order to deal with the said two requirements as contained in paragraph 19, this Court has to necessarily go into the allegations made in each of the complaints that have been put to challenge.

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21. The alleged defamatory statements, which have been made in C.C.No.3 of 2023 on the file of the Principal Sessions Court, Villupuram, are extracted as hereunder :

“தொழிலாளர்களை அழிக்கப் பார்க்கிறது. முதலாளிகளுக்காக, வெளிநாட்டு, பன்னாட்டு நிறுவனங்களுடைய தொழிலதிபர்களுடைய கோரிக்கையை ஏற்று அவர்கள் போடுகின்ற எச்சைப் பணத்திற்க்காக, அவர்கள் அள்ளி வீசுகின்ற அந்த பணத்திற்க்காக, கையூட்டிற்க்காக, ஊழல் செய்வதற்க்காக இன்றைக்கு அந்த தொழிலதிபர்களுடைய பணத்தைப் பெற்றுக் கொண்டு, அந்தத் தொழிலதிபர்கள் செழிக்க வேண்டும், வாழ வேண்டும், கொள்ளையடிக்க வேண்டும், தொழிலாளர்களை உறிஞ்ச வேண்டும்.

இப்படிப்பட்ட நிலையிலேயே இந்த அரசு இந்த திராவிட முன்னேற்றக் கழக அரசு நாள்தோறும், ஒவ்வொரு நாளும் திட்டமிட்டு குறிக்கோளுடன், ஒரு இலட்சியமாக ஒரு நாளைக்கு இவ்வளவு கொள்ளையடிக்க வேண்டும், இத்தனை கோடி ஒரு நாளைக்கு சேர்க்க வேண்டும். கொள்ளையடிக்க வேண்டுமென்று திட்டமிட்ட இந்த அரசு திமுக



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அரசு ஸ்டாலின் அரசு இன்றைக்கு மக்களை வஞ்சித்து, ஆட்டை கடிச்சி மாட்டை கடிச்சி இன்றைக்கு தொழிலாளர்களையும் இந்த அரசு விட்டுவைக்கவில்லை.

பெண்களுக்கு முழுக்க முழுக்க இந்த அரசிலே பாதுகாப்பு இல்லை. இதுதான் தாலிய அறுத்துதான் கட்சியே பின்ன எப்படி இருக்கும். பெண்களைப் பற்றி பாதுகாப்பு கவலை இல்லை இந்த அரசுக்கு.

இந்த அரசால் இரண்டாண்டு காலத்திலே இந்த அரசு செய்திருக்கிற ஸ்டாலினுடைய அரசு செய்த ஒரே சாதனை போதை. போதையை தமிழ்நாடு முழுவதும் அமோகமாக விற்பனை செய்ததுதான் இந்த அரசினுடைய சாதனை.

அரசு இந்த அரசு ஒரு அரசே 24 மணி நேரமும் சட்டவிரோதமாக பாரை குறிப்பிட்ட நேரத்திற்குப் பிறகு சட்ட விரோதமாக அரசே நடத்தி கள்ளச்சாராயத்தை கள்ள பிராந்தியை விற்றுக்கொண்டு, கோடிக்கணக்கான பணங்களை கிட்டதட்ட ஆண்டு 5 ஆயிரம் கோடி ரூபாயைக் கொள்ளையடித்து கொண்டிருக்கக்கூடிய அரசு இந்த ஸ்டாலினுடைய அரசு.

விளையாட்டு மைதானங்களிலே இனி சரக்கு கொடுக்கலாம், விக்கலாம். இனிமே டிவிலே பார்ப்பீங்க பாருங்க, இனிமே ஐபிஎல் மேட்சலாம் பாக்குறீங்கள்ல, எல்லாம் இனிமே சரக்கு பாட்டில் வெச்சிருப்பான். அதுக்கு முன்னோட்டமாதான், உன் பையன், உன் பையன் இதை மாறி பண்ணினும்னு தான், அவன் புள்ளையை அனுப்பி வச்சான்.

இந்த அரசு தினந்தோறும் மக்களுடைய வரிப்பணத்தை கொள்ளையடித்துக் கொண்டிருக்கிறது.



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இந்த அரசு செயல்படவில்லை, செயல்படாத ஒரு அரசாக இருக்கிறது. மக்களுடைய நலன் மீது அக்கறையில்லாம அரசாக இருக்கிறது. மக்களுடைய நலன் மீது அக்கறையில்லாம அரசாக செயல்படுகிறது.”

22. On carefully reading the above statements/imputations, it is seen that the petitioner alleged that the Government headed by the Hon'ble Chief Minister - Mr.M.K.Stalin is involved in obtaining illegal gratification from the industrialists to help them augment their business by drawing the blood of the workers and destroying them. It was also alleged by the petitioner that the Government headed by the Hon'ble Chief Minister - Mr.M.K.Stalin looted nearly Rs.5,000 Crores by running the bars and by sale of illicit arrack and brandy. It was further alleged that the Government headed by the Hon'ble Chief Minister - Mr.M.K.Stalin achieved in making the State narcotic and thereby there is no protection for the women folk and their mangal sutra is being snatched.

23. It is not necessary for this Court to translate each of the allegations that have been extracted except to cull out the core

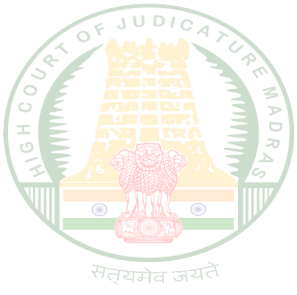


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imputations/statements. The statements made are obviously defamatory since they will harm the reputation and character of the person concerned in the estimation of others. The imputations/statements have been made by clearly mentioning the name of the Hon'ble Chief Minister, who is heading the Government and therefore, even assuming that he is not holding the concerned portfolio, as the Chief Minister is the Head of the Executive, he is responsible for the functioning of every department in the State. Hence, those imputations made by the petitioner are directly attributable or connected with the discharge of public functions of the office of the Hon'ble Chief Minister.

24. The above findings rendered by this Court are only prima facie findings and this Court holds that the other two requirements are also fulfilled in this case. Therefore, there is no ground to interfere with the complaint that is pending in C.C.No.3 of 2023 on the file of the Principal Sessions Court, Villupuram. It is left open to the petitioner to raise all his defence in this complaint. Accordingly, W.P.No.879 of 2024 is liable to be dismissed.



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W.P.No.882 of 2024 :

25. The alleged defamatory statements, which have been made in C.C.No.2 of 2023, are extracted as hereunder :

”திருப்பூரிலே வெளிமாநிலத்தவர்கள், லட்சக்கணக்கான தொழிலாளர்கள் இன்றைக்கு தமிழகத்தை விட்டு வெளியேறுகிறார்கள். இதனால் தொழில் பாதிக்கப்படும். தொழில் பாதித்தால் தமிழகம் முன்னேற்றம் பாதிக்கப்படும், வருவாய் பாதிக்கப்படும், வருவாய் பாதித்தால் உங்களுக்கு வர வேண்டிய செய்ய வேண்டிய திட்டங்கள் பாதிக்கப்படும். திட்டமிட்டு இந்த திமுக அரசு, ஸ்டாலினுடைய அரசு இந்த அரசினுடைய தவறுகளை மறைப்பதற்கு, தன்னுடைய கையாலாகாதனத்தை மறைப்பதற்கு ஆள தெரியாத ஒரு முதலமைச்சர் தன்னுடைய திறமையற்ற நிர்வாகத்தை மறைப்பதற்காக மக்களுடைய கவனத்தை திசை திருப்புவதற்காக இன்றைக்கு அரசே இந்த திமுக அரசே இந்த முதலமைச்சரே நாங்கள் குற்றஞ்சாட்டுகிறோம். நீங்கள் எதிர்கட்சியை குற்றஞ்சாட்டுகிறீர்கள். இந்த டிஜிபி சொல்லுகிறார். அரசு பின்னணியில் இருக்கிறது என்று சொல்லுகிறார்.

அந்த அரசியல் கட்சி வேறு யாருமில்ல, இன்றைக்கு தமிழகத்தை ஆண்டு கொண்டிருக்கின்ற திராவிட முன்னேற்ற கழகம், அதனுடைய முதலமைச்சர் மு.க.ஸ்டாலின் தான் இதற்கு முழு பொறுப்பு. வேறு எந்தக் கட்சியும் கிடையாதுங்க. இன்றைக்கு தூண்டிவிட்டு அந்த வெளிமாநில

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தொழிலாளர்கள் தாக்கப் படுகிறார்கள் என்று தூண்டிவிட்டு அந்த வதந்தியைப் பரப்பி, பத்திரிக்கையிலே அதை மிகப் பெரிய பிரச்சினையாக உருவகப்படுத்தி அந்தத் தொழிலாளர்கள் மத்தியில் ஒரு அச்சத்தை உருவாக்கியது யார்? இந்த அரசு.

அப்ப ஆள தெரியாத, கட்டுப்படுத்தத் தெரியாத, போலீசை சிறப்பாக செயல்படுத்த தெரியாத உனக்கு எதற்கு இந்த முதலமைச்சர் பதவி? உதறிட்டு போ, உதறிட்டு போ. உன்னால் செயல்படுத்த முடியவில்லை என்றால், உன்னுடைய கையாலாகாதனத்தை மறைத்து விட்டு மற்றவர்களை குற்றஞ்சாட்டுவதை நிறுத்து. இந்த அரசுக்கு சுருக்கமாக சொன்னால் ஸ்டாலினுடைய அரசு ஒரு 420 அரசு, ஒரு cheating அரசு, 420 அரசு, 420 முதலமைச்சர், அதான் நடக்கிறது. மக்களுக்கு எதுவும் நடக்காது, நீங்கள் எதையும் எதிர்பார்க்காதீங்க.”

26. On carefully reading the above statements/imputations, it is seen that the petitioner alleged that the workers in Tirupur from other States were attacked and thereby it created a panic among the workers of the other States and it is only the Government headed by the Hon'ble Chief Minister - Mr.M.K.Stalin, which is responsible for propagating a false propaganda about the attack on the workers of the other States. It was further alleged that the Government headed by the Hon'ble Chief Minister - Mr.M.K.Stalin is a cheating Government



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(420 Government) and that nothing good would happen to the people.

27. The above allegations touch upon the very serious incident, which took place in Tamil Nadu where it was propagated that the workers belonging to other States must be sent out of the State and that they were attacked. This really created a panic in the minds of the workers of the other States. Immediate steps were taken to bring the situation under control since it would have had a larger impact on the reputation of the State in dealing with the workers belonging to other States. Hence, when such a serious situation is directly attributed against the Government headed by the Hon'ble Chief Minister - Mr.M.K.Stalin, it is not only defamatory, but also attributable or connected with the discharge of public functions of the Hon'ble Chief Minister. The law and order problem, which is imputed against the Government headed by the Hon'ble Chief Minister, directly defames the Chief Minister since, as the Head of the Executive, the Hon'ble Chief Minister is expected to maintain a law and order situation in the State.



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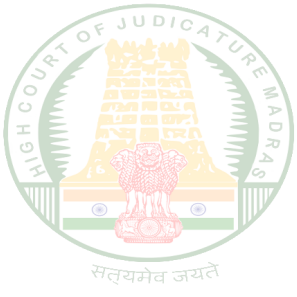
28. The above findings rendered by this Court are prima facie findings and this Court holds that the other two requirements are also fulfilled in this case. Therefore, there is no ground to interfere with the complaint that is pending in C.C.No.2 of 2023 on the file of the Principal Sessions Court, Villupuram. It is left open to the petitioner to raise all his defence in this complaint. Accordingly, W.P.No.882 of 2024 is also liable to be dismissed.

W.P.No.884 of 2024 :

29. The alleged defamatory statements, which have been made in C.C.No.4 of 2023, are extracted as hereunder :

”இன்றைக்கு அனைத்து துறையும் முடங்கி செயலிழந்து போய் இருக்கிறது. முதலமைச்சருக்கு என்ன செய்வதென்று தெரியாமல் இன்றைக்குக் குழம்பி போய் இருக்கிறார். பயந்து போய் இருக்கிறார். அச்சப்பட்டுக் கொண்டிருக்கிறார். பதுங்கி ஓடிக் கொண்டிருக்கிறார்.

முதலமைச்சரே இன்று தடுமாறிக் கொண்டிருக்கிறார். செயலிழந்து போய் இருக்கிறார். என்ன செய்வதென்றே தெரியாமல் இருக்கிறார். அச்சப்பட்டுக் கொண்டிருக்கிறார். இருண்டவன் கண்ணுக்கு அரண்டதெல்லாம் பேய் அதே மாதிரி இன்றைக்கு மத்திய அரசாங்கம் என்று சொன்னாலே நடுநடுங்கிக் கொண்டிருக்கிற ஒரு முதலமைச்சர்



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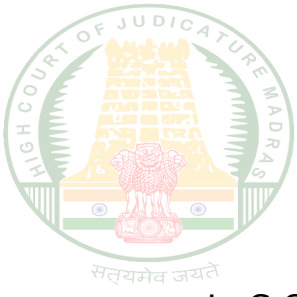
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இன்றைக்கு ஸ்டாலின். ஊழலில் தினந்தோறும்
திளைத்து கொண்டிருக்கிற கொள்ளையடித்து
கொண்டிருக்கிற இந்த மு.க.ஸ்டாலின்
தலைமையிலான அரசு.”

30. On carefully reading the above statements/imputations, it is seen that it is not, per se, defamatory and at the best, the person belonging to the opposition party only expressed his dissatisfaction on the functioning of the Government headed by the Hon'ble Chief Minister. Hence, this Court concludes that the last two requirements have not been fulfilled in this case. Therefore, though this Court does not find any ground to interfere with the impugned Government Order namely G.O.Ms.No.748 dated 30.11.2023, to that extent, the continuation of proceedings in C.C.No.4 of 2023 on the file of the Principal Sessions Court, Villupuram will result in abuse of process of court, which requires interference of this Court. Accordingly, the proceedings in C.C.No.4 of 2023 on the file of the Principal Sessions Court, Villupuram is liable to be quashed.

W.P.No.887 of 2024 :

31. The alleged defamatory statements, which have been made



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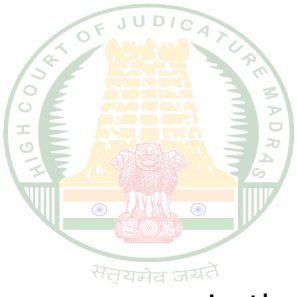
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in C.C.No.1 of 2023, are extracted as hereunder :

“இது ஒரு கஞ்சா அரசு, டாஸ்மாக் அரசு, டாஸ்மாக் முதலமைச்சர், கஞ்சா முதலமைச்சர். இது முழுக்க முழுக்க தமிழ்நாடு முழுவதும் இன்றைக்கு போதைப்பொருள். அதைக் கட்டுப்படுத்துவதற்கு, தடுப்பதற்கு இந்த அரசு தவறியிருக்கிறது. ஸ்டாலின் அரசு தவறியிருக்கிறது, கட்டுப்படுத்துவதற்கு வக்கில்லை, துப்பில்ல, துப்பில்லாத ஒரு முதலமைச்சர். எப்படி கட்டுப்படுத்துவாரு?”

கஞ்சா எங்க பாத்தாலும் விற்குது, மாணவர்கள் சீரழிந்து இருக்கிறார்கள், மாணவிகள் கூட்டு பலாத்காரம் செய்யப்படுகிறார்கள். இதுதான் இந்த திமுக அரசு. இந்த இரண்டு ஆண்டு காலத்திலே செய்திருக்கிற சாதனை டாஸ்மாக் விற்பனை, கஞ்சா விற்பனை, கூட்டு பலாத்காரம், மாணவர்கள் சீரழிவு இதுதான் நடக்கிறது. வேறு எதுவும் நடக்கலை.”

32. On carefully reading the above statements/imputations, it is seen that the petitioner expressed in strong words his dissatisfaction with regard to the manner, in which, the Government is functioning by not able to effectively control the drug menace. That apart, it was also stated that the Government is being run only through the revenue earned in TASMAC and as a result, the students are affected and under the influence of Ganja, sexual abuse/sexual harassment takes place. The petitioner concluded that the only achievement of the Government



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in the past two years is TASMAL sale, Ganja sale, sexual abuse of girls and degradation of students.

33. In the considered view of this Court, the petitioner used very strong expressions to ventilate his dissatisfaction. Even assuming these statements to be defamatory, it is not directly attributable or connected with the discharge of public functions of the Hon'ble Chief Minister. This Court concludes that the last two requirements have not been fulfilled in this case. Therefore, though this Court does not find any ground to interfere with the impugned Government Order namely G.O.Ms.No.537 dated 02.9.2023, to that extent, the continuation of proceedings in C.C.No.1 of 2023 on the file of the Principal Sessions Court, Villupuram will result in abuse of process of court, which requires interference of this Court. Accordingly, the proceedings in C.C.No.1 of 2023 on the file of the Principal Sessions Court, Villupuram is also liable to be quashed.

34. Before concluding, it must be borne in mind that for democracy to operate successfully, the opposition must be recognized



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as legitimate and given an institutional form. The main role of the opposition is to make constructive criticism of the government, its policies and its plans and programmes and make the ruling government work in accordance with social welfare and public good. The opposition must make the ruling government accountable to public. The constructive opposition will expose the weakness of the ruling government and it is the opposition, which is the guardian of public interest and it reminds the ruling government its duty towards people, who elected them to power. Opposition provides checks and balances in the functioning of a democracy. Therefore, it must be ensured that the opposition is not throttled and prevented from voicing their concern by subjecting them to undergo criminal cases.

35. While undertaking the above exercise, it must be borne in mind that such dissent and criticism should be made in a temperate language. In the name of voicing the opposition, vituperative outburst must be avoided since such scurrilous sharp tongue slanders may result in maligning the government and it can be construed as defamatory statements. How so ever noble is the intention behind



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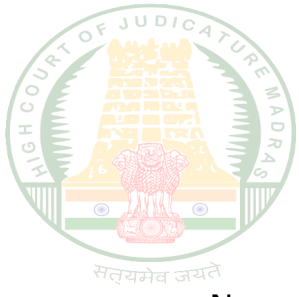
making such statements, the offensive and opprobrious statements can side track the issue that has been raised and they will be construed more as defamatory statements. This is more so when personal attacks are made against the public servants/constitutional functionaries by vilifying them. It is expected in a matured democracy that the opposition expresses its views in a language, which does not cross the limits and becomes defamatory. These observations are more appropriate to the facts of the present case.

36. In the result,

(i) W.P.Nos.879 and 882 of 2024 stand dismissed. Consequently, WMP.Nos.907, 910, 911, 912 & 913 of 2024 are also dismissed; and

(ii) W.P.Nos.884 and 887 of 2024 stand allowed. Though this Court does not find any ground to interfere with the respective Government Orders namely G.O.Ms.No.748 dated 30.11.2023 and G.O.Ms.No.537 dated 02.9.2023, to that extent, the proceedings respectively in C.C.Nos.4 and 1 of 2023 on the file of the Principal Sessions Court, Villupuram are hereby quashed. Consequently, WMP. Nos.914 to 916, 918 & 919 of 2024 are closed.

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No costs.

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24.1.2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

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N.ANAND VENKATESH,J

RS

To

- 1.The Secretary to Government,
Public (Law & Order-H)
Department, Secretariat,
Fort St.George, Chennai-9.
- 2.The Principal Sessions Court,
Villupuram.
- 3.The Public Prosecutor,
Villupuram District & Sessions
Court, Villupuram.
- 4.The Public Prosecutor,
High Court, Madras.

W.P.Nos.879, 882, 884
& 887 of 2024 & WMP.Nos.907,
910 to 916, 918 & 919 of 2024

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