

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022

Pronounced on : 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.OP(MD)No.20774 of 2021

and

CRL.MP(MD)Nos.11863 & 11864 of 2021

Maridhas

... Petitioner / Sole Accused

vs.

S.R.S.Umari Shankar

... Respondent /
Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.9 of 2021 on the file of the Judicial Magistrate No.3, Thoothukudi and quash the same.

For Petitioner : Mr.Anantha Padmanabhan,
for Mr.M.Karthikeyavenkatachalapathy.

For Respondent : Ms.P.Malini.

ORDER

Heard the learned counsel on either side.

2. Feeling aggrieved by the petitioner's YouTube Video posted on 03.01.2020, the respondent herein filed the impugned private complaint under Section 500 of IPC. The jurisdictional magistrate took cognizance of the offence and issued summon to the petitioner. To quash the same, this criminal original petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions projected in the memorandum of grounds and submitted that the impugned complaint is not maintainable.

4. Per contra, the learned counsel appearing for the complainant submitted that the impugned complaint is very much maintainable. She took me through the contents of the impugned complaint and pointed out that the words uttered by the petitioner are on the face of it defamatory. The petitioner has without any justification made defamatory statements

against Dravida Munnetra Kazhagam. The complainant is an office bearer of the party. He was therefore entitled to file the impugned complaint. A reading of the complaint would show that all the essential ingredients of the offence of the defamation are present in this case. The complainant has produced a witness and also enclosed the offending video. Only after due application of judicial mind, cognizance was taken. The petitioner cannot claim the benefit of any of the exceptions to Section 499 of IPC. The petitioner's conduct is malicious and suffers from lack of good faith. The learned counsel heavily relied on the decision of the Hon'ble Apex Court reported in **(2016) 7 SCC 221 (Subramanian Swamy v. UOI)**. It was held therein that reputation is a valuable right entitled to protection. In any event, the defence put forth by the petitioner will have to be necessarily established only in a regular trial. She also called upon this Court to bear in mind the broad sweep of Explanation 2 to Section 499 of IPC. She pressed for dismissal of this petition.

5.I carefully considered the rival contentions and went through the materials on record. The Citizenship Act was

amended in the year 2019 to give relief to the religious minorities persecuted in some of the neighboring countries. That led to protests all over India. In Tamil Nadu also, agitations were held. An Advocate, by name, Ms.Gayathri Kanthadai resorted to a novel form of protest. The “Kolam” drawn by her and a few others in Besant Nagar in Chennai contained slogans opposing CAA. The Chennai police detained them. This drew criticism from Dravida Munnetra Kazhagam which was the then principal opposition party.

6.Following a meeting with the protestors, the DMK called upon its cadre to emulate Ms.Gayathri Kanthadai by drawing such Kolams in front of their homes. In the meanwhile, the Tamil Nadu police in a press conference alleged that Ms.Gayathri Kanthadai was associated with a Pakistan based NGO “Bytes for all”. In this background, the petitioner came out with the video in question.

7.The petitioner targeted Ms.Gayathri Kanthadai and Dravida Munnetra Kazhagam. If DMK or Ms.Gayathri Kanthadai had lodged a complaint under Section 500 of IPC,

the locus standi could not have been questioned. Admittedly, the complaint was filed neither by DMK nor by Ms. Gayathri Kanthadai. The respondent has filed it in his individual capacity and not on behalf of DMK. The respondent herein claims to be a member and also an office bearer of DMK. There is nothing on record to show that DMK had authorised the complainant to file the impugned complaint.

8. Section 499 of IPC penalizes harming the reputation of any person. Explanation 2 to Section 499 of IPC states that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. The expression "as such" occurring in Explanation 2 is highly significant. It was considered in the decision reported in ***AIR 1938 Sind 88 (Ahmedali Adamali v. Emperor)***. It was held therein that if a collection or company of persons as such is defamed one of their members may make a complaint on behalf of the collection or company of persons as a whole, but the defamation must be shown to be of all the persons in the association or collection as such.

9.The expression “person” occurring in the main part of Section 499 of IPC has to be inclusively construed. Section 3 (42) of General Clauses Act, 1897 defines that “person” shall include any company or association or body of individuals, whether incorporated or not. It would obviously include a political party. The expression “political party” is defined in para 2(1)(h) of the Election Symbols (Reservation and Allotment) Order, 1968 thus :

“‘Political party’ means an association or body of individual citizens of India registered with the Commission as a political party under para 3 and includes a political party deemed to be registered with the Commission under the proviso to sub-para (2) of that paragraph”.

When the validity of the Symbols Order was questioned, the Hon'ble Supreme Court in ***Kanhiya Lal Omar v. R.K.Trivedi (1985) 4 SCC 628*** observed as follows :

“10.It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to an unifying effect amongst the people with a common political

and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis in other words "on systematized differences and unresolved conflicts." That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-Second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be

deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.”

10.A reading of the decision of the Hon'ble Supreme Court in ***Desiya Murpokku Dravida Kazhagam and Ors. vs. The Election Commission of India (2012) 7 SCC 340*** (both the majority decision as well as the dissenting one) enlightens us with the following facts :

“60.Section 29A of the R.P. Act, 1951, provides for the registration of the political parties with the Election Commission. It was inserted in the R.P. Act, 1951 in the year 1989. From the language of Section 29A it appears that registration with the Election Commission is not mandatory for a political party, but optional for those political parties, which intend to avail the benefits of Part IV of the said Act of which Section 29A is also a part.....

.....

119.The expression "political party" was first introduced in the R.P. Act in the year 1989

by the amending Act No. 1 of 1989. Section 2(f) was inserted, which provides for the definition of the expression "political party". Simultaneously, by the same amending Act, Part - IV A was introduced into the Act, which dealt with the registration of political parties with the Election Commission and the advantages flowing from such registration.

120.The expression "recognised political party" was first introduced in the Act by Act No. 21 of 1996, in the proviso to Section 33 and Sub-Section (2) of Section 38. Later, such an expression was employed in Section 39A and in the second explanation to Sub-Section (1) of Section 77, Section 78A and Section 78B, which occur under Part-VA of the Act by the amending Act No. 46 of 2003."

11.Though in the dissenting judgment of His Lordship Mr.Justice Jasti Chelameswar, it has been observed that political parties are not bodies corporate but are only associations consisting of shifting masses of people, a recognized political party is very much a distinct entity enjoying constitutional recognition. This is particularly on account of the introduction of the X Schedule in the Indian Constitution. The legislative wing of a political party can issue

commands through its whip. If they are disregarded by the individual legislator, then consequences as contemplated by law will follow. Just as a company was held to be a separate entity apart from its shareholders in the celebrated decision in ***Salomon vs. A. Salomon & Co. Ltd [(1897) AC 22]***, a recognized political party is also a separate person apart from its members.

12.The petitioner has not targeted the members of DMK as such. The reference to “DMK persons” occurring in the video is not per se defamatory. What appear to be defamatory are only references to the Party. The question is when the political party alone is defamed, whether any member can file a complaint for defamation.

13.The offence of defamation is not like any other IPC offence. Section 199 of Cr.Pc contains an embargo that no court shall take cognizance of the offence except upon a complaint made by some person aggrieved by the offence. The expression “some person aggrieved” obviously includes a third party apart from the person defamed. But the

expression "some person aggrieved" cannot be construed too expansively. This is because Section 198 of Cr.Pc dealing with prosecution for offences against marriage also employs the very same expression "some person aggrieved". Only very proximate relatives like father, mother or brother of the affected woman can file a complaint and not any distant relative. One gets the answer in ***John Thomas v. K.Jagadeesan (Dr) (2001) 6 SCC 30*** in which it was held as follows :

"13.The collocation of the words "by some persons aggrieved" definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. If K.J. Hospital is a private limited company, it is too farfetched to rule

out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the company....”

If a recognized political party has been defamed, a complaint by a high ranking functionary like the President or Secretary of the Party would definitely be maintainable in the light of the aforesaid decision. Where the Party alone in contra distinction with partymen has been defamed, others not at the helm of affairs cannot maintain a complaint as they would not be persons aggrieved.

14.The Hon'ble Supreme Court in *Subramanian Swamy V. Union of India* reported in (2016) 7 SCC 221 held that whether the complainant is a person aggrieved has to be determined in each case according to the fact situation. It was further reiterated following *M.S.Jayaraj v. Commissioner of Excise (2000) 7 SCC 552* and *G.Narasimhan v. T.V.Chokkappa (1972) 2 SCC 680* that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an “aggrieved person”, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. *G.Narasimhan* was a case arising under Section 482 of Cr.Pc.

15.The issue is no longer *res integra*. A learned Judge of this Court (His Lordship Mr.Justice M.Dhandapani) in the decision reported in **2021 (3) MWN (Cr.) 159 (*Tamilisai Soundararajan V. Dhadi K.Karthikeyan*)** had held that where the person or the party alleged to have been affected by the defamatory statements have not given any authorisation to the complainant and where the complainant on his own accord for reasons best known to him had thought fit to file the private complaint, he would not be a person affected and he cannot invoke Section 500 of I.P.C. In the said case, the petitioner before the High Court had alleged that Viduthalai Chiruthaigal Katchi (VCK) is conducting Kangaroo Courts and had uttered derogatory remarks against the said party and its head. A person claiming to be a party member filed a complaint. Cognizance was taken and summon was issued. The same was quashed by the Madras High Court. The said decision is squarely applicable to the case on hand.

16.The petitioner had only made imputations against Ms.Gayathri Kanthadai and DMK. No imputation has been made against DMK partymen as such. The complainant has

not suffered any legal injury. His reputation has not in any way been lowered. The Party has not authorised the filing of the complaint. If the partymen or the members of DMK had been defamed, then as a member of a definite class of people, the respondent could have maintained the complaint. Such is not the case here. The complainant on his own has filed the complaint. Since he is not a person aggrieved, continuation of the impugned proceedings will amount to an abuse of legal process. Therefore, the impugned proceedings are quashed. This criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

10.02.2022

Index : Yes / No
Internet : Yes/ No
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Judicial Magistrate No.3,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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G.R.SWAMINATHAN, J.

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