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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

CrI.O.P.(MD)No.8893 of 2019

and

CrI.MP(MD)No.5643 of 2019

1.Mr.P.A.Ranjith : Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Thirupananthal Police Station,
Tanjore District. : 1st Respondent/Complainant

2.Mrs.P.Kavitha
Inspector of Police,
Thirupananthal Police Station,
Tanjore District,
Tanjore. : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to Crime No.105 of 2019, dated 11.06.2019 on the file of the 1st respondent Police and quash the same.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor

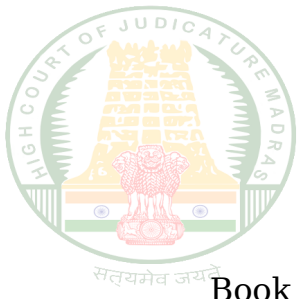


ORDER

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This petition is filed to call for the records pertaining to the case in Crime No.105 of 2019, dated 11.06.2019 on the file of the 1st respondent Police and quash the same.

2.The case of the prosecution is that this petitioner was addressing a gathering on 05.06.2019 around 9.00 pm, organized by Neelapulligal Movement Association in Thirupananthan South Car Street, during that public meeting, he was speaking about the caste system that was introduced by King Rajaraja Chola. He was of the opinion that because of the Chola era rule, most of the people have become landless and the lands were taken from their holdings. Because of the above said, they became landless poor. He also stated that Chola era introduced Devadasi system, which was the root cause for the present day situation. He also stated they are feeding on the cattle, which is revered by other sections of the society. He has also stated that Chola era is dark era in the History. Rajaraja Cholan, the King need not belong to his caste. He was also referring to the caste system, which has been adopted by the political parties, who nominate the candidature for the election on the caste line. He also advised the gathering to read Dr.Ambedkar



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Book and also follow Umar Farook. Based on the speech, the de-facto complainant, who was the Inspector of Police, attached to Thirupananthol Police Station was of the view that his speech instigated violence and enmity between two groups of people. So *suo motu* FIR was registered for the offence punishable under sections 153 and 153-A(i)(a) IPC and investigation was undertaken.

3. Pending investigation, this petition came to be filed seeking quashment mainly on the ground that what was expressed by him during the public speech was only expression of the grievance of the aggrieved persons, who suffered at the hands of monarch; he never intended to incite violence or enmity between two groups of people; gathered information for the above said speech only from the selected and recognized historical works, namely historiography of renowned authors.

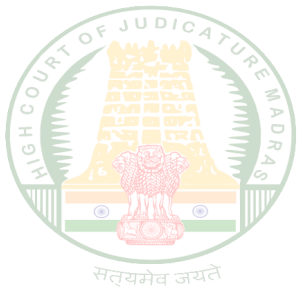
4. Heard both sides.



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5.Voice of the oppressed is not meant to be oppressed and criminalised. But to be listened, discussed, addressed and remedied. The caste system, its formation, effects and ill-effects are one of the most discussed topics, which has been spoken ever-since its inception in the history. History shows that what started to indicate the classification of people on the basis of profession or avocation became geneticized, paving way for the suppression of one group of the society. Consequently it paved the way of creating a society consisting of landless poor making them as 'class' of themselves. The ill effects of such sort of classification of the people and the society were felt and revolted from its inception, as we see through the ages of history.

6.Remedial measures were taken in the form of socio-economic and political reforms, through democratic process. The word “we, the people of India” in the preamble portion of the Constitution of India signifies the duties, obligation of the society of citizens as a whole, of India to promote fraternity, by assuring them all with the dignity.

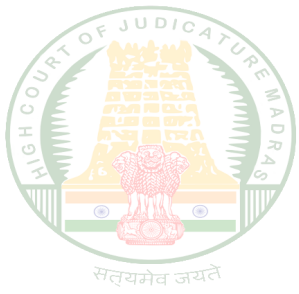


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7.The combined reading of the opening paragraph of this discussion with that of the preamble portion of the Constitution of India, will impress the duties of citizens to hear the voice of the oppressed and take remedial measures. Unless it is remedied, then the aim which - namely social fraternity- the preamble portion of the Constitution of India aims to achieve, will fail.

8.The soul of the Constitution of India wants to heal the wounds of oppressed by lifting them to the level of brotherhood. In this context, the speech of Dr.Ambedkar in the Constituent Assembly over the significance of the word 'fraternity' is relevant to be extracted.

9.In the words of Dr.Ambedkar, “fraternity means a sense of common brotherhood of all Indian – of Indians being one people..... Castes are anti-national: in the first place they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these differences if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint.”



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10.A reading of Dr.Ambedkar speech shows that the word, 'we the people of India' in the preamble portion of the Constitution of India signifies the people as a whole in reality to make it as a Nation. Unless the society is lifted to the level of fraternity, it cannot be called as a Nation as a whole in reality.

11.So as mentioned above, remedial measures were taken soon-after the independence by way of introducing Land Reforms Acts, so that the landless poor allotted with lands. Economic reforms, steps were also taken, apart from the social reforms to lift the society to the level of the real nation as a whole. When the Constitution demands such an act on the part of States in the nature of reforms and indeed taken to lift the society to the level of Nation as a whole, it should not intend to penalize or criminalise voice of the oppressed though expressed in the form of criticism.

12.No doubt none is beyond criticism, and the Indian Constitution recognizes criticism upto the level of decency and morality. It is also equally seen that no purpose is going to be served by going through the history and making criticism upon the erstwhile Kings and Monarch for the evils of today.



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13. It is also equally seen that comments were raised for and against the views expressed by the petitioner in the above said public speech about the caste system that has been stated to be introduced by Chola era. By going through the History of Chola era as found in the stones inscriptions, copper plates etc, views have been made by historians that casteism was prevailing during Chola era. Police cannot take actions against those historians for having made such comments. The main purpose of the history is to take lessons from the society of yesteryears for reforming the present day society. So beyond that, going back to the history and making the comments criticizing the erstwhile monarch and Kings are not going to serve any purpose as I said earlier. But at the time, the views that have been made by the petitioner, it is seen that those facts were only gathered from the historical books and he has not made any research on his own. So making criticism upon Chola era for the present day, though may not be proper, but it does not exceed the limit and right that has been conferred upon him under Article 19 (1)(a) of the Constitution of India. It was not aimed at creating enmity between two groups of people.



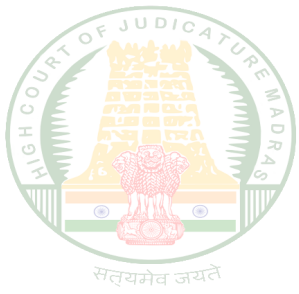
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14.As rightly pointed out by the learned counsel for the petitioner, in the grounds of petition, what was expressed by him shows only a grievance over the system and beyond that, it cannot be stretched to drag him to face the criminal prosecution.

15.The next offending word used by the petitioner is that the petitioner even though spoken about a section of the society revers cattle as Gods but they are feeding them. This is the order of Indian society, varied culture, food habits etc, beyond that he cannot be visited with the criminal prosecution for having delivered this sort of speech.

16.With the above said discussion, now we will see whether the ingredient of offences under section 153 IPC are attracted. While interpreting Section 153 IPC, the Hon'ble Supreme Court, in a recent decision reported in ***Patricia Mukhim Vs. State of Megalaya and others***,2021(2)MLJ(Crl.) 360 has observed like this:-

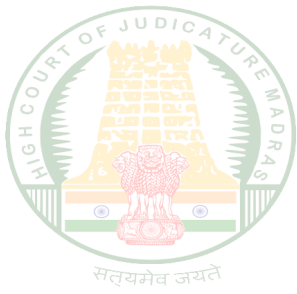
“9.Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent



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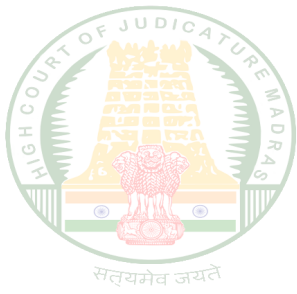
such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153 A IPC and the prosecution has to prove the existence of mens rea in order to succeed. Balwant Singh Vs. State of Punjab. LNIND 1995 SC 1420: (1995) 3 SCC 214 : AIR 1995 SC 1785.

10. The gist of the offence under Section 153 A IPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning. Manzar Sayeed Khan Vs. State of Maharashtra, (2007)2 MLJ (Cr1) 1807: LNIND 2007 SC 437 : (2007) 5 SCC 1 : AIR 2007 SC 2074.



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11. In Bilal Ahmed Kaloo v. State of A.P. LNIND 1997 SSC 1060 : (1997)7 SCC 431 : AIR 1997 SC 3483, this Court analysed the ingredients of Sections 153 A and 505 (2) IPC. It was held that Section 153 A covers a case where a person by “words, either spoken or written, or by signs or by visible representations”, promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505 (2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence under Section 153 A and Section 505 (2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in Bilal Ahmed Kaloo (supra) that merely inciting the feelings of one community or group without any reference to any other community or group cannot attract any of the two sections. The Court went on to highlight the distinction between



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the two offences, holding that publication of words or representation is sine qua non under Section 505. It is also relevant to refer to the judgment of this Court in Ramesh v. Union of India; LNIND 1988 SC 74 : (1988) 1 SCC 668 : AIR 1988 SC 775 in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as they say in English law “the man on the top of a Clapham omnibus” should be applied.

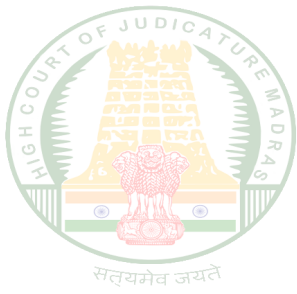
12. This Court in Pravasi Bhalai Sangathan v. Union of India & Ors. LNIND 2014 SC 335 : (2014) 11 SCC 477 : AIR 2014 SC 1591 had referred to the Canadian Supreme Court decision in Saskatchewan (Human Rights Commission) v. Whatcott (2013) 1 SCR. In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting “hatred” as is used in legislative provisions prohibiting hate speech. The first test was for the Courts to apply the hate speech



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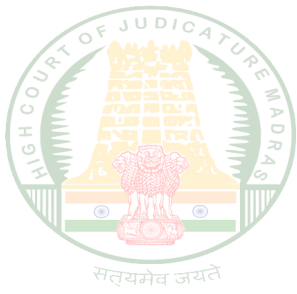
prohibition objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. The second test was to restrict interpretation of the legislative term “hatred” to those extreme manifestations of the emotion described by the words “detestation” and “vilification”. This would filter out and protect speech which might be repugnant and offensive, but does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or injury. The third test was for Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty.

17. So, when we apply the yardstick to the speech that has been rendered by the petitioner, we can say that it did not intend to create enmity between people, in this context, para 8 of the above said judgment, is also relevant, which reads as follows:-



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“8.It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society. ” - Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, 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. Speech crime is punishable under Section 153 A IPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153 A. As we are called upon to decide whether a prima facie case is made out against the Appellant for committing offences under Sections 153 A and 505 (1) (c), it is relevant to reproduce the provisions which are as follows:



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153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. —

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be



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trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.-

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

505. Statements conducing to public mischief. — (1) Whoever makes, publishes or



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circulates any statement, rumour or report, — ***
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(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

18.Nothing more can be said in this issue by this court, than the words of Hon'ble Supreme Court. In view of the above, without any hesitation, we can come to the conclusion that absolutely there was no intention on the part of the petitioner to promote enmity between two groups of people as the context, meaning, purpose, message that he wanted to pass, will show and demonstrate.

19.Now coming to the opening paragraph of the order, as stated above, the grievance that has been expressed by the petitioner is not to be penalized by visiting him with the criminal prosecution. So, I am of the considered view that continuation of the criminal process against the petitioner will and is abuse of process of law. So, the entire proceedings in respect of Crime No. 105 of 2019 pending on the file of the 1st respondent Police is liable to be quashed and accordingly, it is quashed.



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20. In the result, this Criminal Original Petition stands **allowed**. The entire proceedings in respect of Crime No.105 of 2019 on the file of the of the 1st respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

12.11.2021

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.



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G.ILANGOVAN, J

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To,

- 1.The Inspector of Police,
Thirupananthal Police Station,
Tanjore District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.OP(MD)No.8893 of 2019

12.11.2021