

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Decided on : 16.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.5519 of 2015

and

MP(MD)No.1 of 2015

K.Rajanarayanan alias Ki.Ra ... Petitioner / 1st respondent

Vs.

1.P.Kathiresan ... 1st Respondent / Complainant

2.The State, rep.by
The Sub Inspector of Police,
Tallakulam Police Station,
Madurai – 625 002. ... 2nd Respondent / 2nd Respondent

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in P.R.C No.80 of 2014 on the file of the Judicial Magistrate Court No.2, Madurai and to pass an order quashing the same as illegal and to grant any relief or reliefs as this Court deems fit and proper in the nature and circumstances of the case and thus render justice.

For Petitioner : Mr.M.Siddharthan

For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R2

Mr.M.Ayyappan for R1

ORDER

Violence is the most extreme threat to freedom of expression. Many have paid with their lives for exercising this basic human right. Timothy Garton Ash in his seminal work "Free Speech" would call it as "the assassin's veto". When Ayatollah Khomeini issued fatwa to kill Salman Rushdie, V.S.Naipaul remarked that assassination is an extreme form of literary criticism. Long back, an American free speech scholar Harry Kalven Jr. coined the term "heckler's veto" to describe the way a speaker can be silenced in a public meeting. To these can be added "the prosecutor's veto". It is setting the criminal law in motion to target those legitimately exercising their right of speech and expression.

2.A recent instance is the registration of FIR in Muzaffarpur District against 49 celebrities, including Ramchandra Guha, Aparna Sen, Mani Ratnam. They had written an open letter to the Prime Minister of India expressing concern over certain developments. A Muzaffarpur based lawyer Sudhir Kumar Ojha filed a case against them in the court of Chief Judicial Magistrate. Based on the direction given by the court, an FIR came to be registered for sedition, public nuisance, hurting religious feelings and insulting with an intent to provoke breach of peace. This

caused considerable consternation to the enlightened citizenry. It is now reported that the FIR has since been closed. But, the complainant has stated that he intends to file a protest petition.

3. One can recall a spate of private complaints filed in various courts across the country against the renowned artist Maqbool Fida Husain. Some of his paintings were charged as vulgar and obscene. Justice Sanjay Kishan Kaul sitting in Delhi High Court (as His Lordship then was) quashed the criminal proceedings after authoritatively laying down what the law of obscenity is. This eloquent decision reported in **2008 CrL LJ 4107 (Maqbool Fida Husain vs. Raj Kumar Pandey)** concludes on this evocative note - "A painter at 90 deserves to be in his home-painting his canvass."

4. The case of the petitioner is no different. K. Rajanarayanan popularly known as "Ki. Ra.," is an acclaimed Tamil writer. An English translation of his novel "Gopallapuram" published by Penguin India carries the following blurb :

"Ki. Rajanarayanan (b. 1922) has spent over five decades gathering the most exotic tales of his favourite land, Karisal Kadu—the scorched drought-stricken land in Tamil Nadu. Popularly known as Ki. Ra., he is a powerful

storyteller. His short story 'Mayamaan' (1958) is considered the hallmark of the golden age of modern Tamil literature. An English translation of his collection of folk tales, Where Are You Going, You Monkeys?, was recently published to much acclaim. He has been the recipient of the prestigious Kalaimamani and Sahitya Akademi awards."

5. There are many who believe that he deserves the highest literary honour, namely, the Jnanpith Award. The impeccable standing and credentials of Ki.Ra., did not however deter the first respondent herein from filing a complaint before the court of Judicial Magistrate No.2, Madurai against him. The provocation was the petitioner's interview published by a magazine "The Sunday Indian" for its issue dated 30th September 2012. When asked as to why he had not written on Dalit life, Ki.Ra replied that since he is not acquainted with their dialect, he did not attempt to portray their lives.

6. The complainant herein found two things seriously objectionable in the remarks of the petitioner. The complainant belongs to a community known as "Pallar", that has been notified as a Scheduled Caste in Tamil Nadu. They proudly called themselves as Devendra Kula Velalar. In fact, a section of the community is demanding that they should be independently

categorized and de-notified as a Scheduled Caste. The complainant would point out that the use of expression “Dalit” has been frowned upon by the Bombay High Court as well as in the communication issued by the Governmental authorities. But, more than anything else, he has taken serious exception to the petitioner's expression “Avan” while referring to the Dalits.

7. In English, in subjective case, the singular form of the first person is “I”. Second person singular is “YOU”. The third person singular in the case of masculine gender is “HE” (subjective case), “HIS” (objective case) and “HIS” (possessive case). In Tamil, the second person singular and third person singular can be expressed in two ways : honorific and non-honorific. Honorific reference in the case of third person singular in masculine gender will be “Avar”. “Avan” will be non-honorific reference. Depending on the context, the expression, “Avan” can also be disrespectful. The complainant would point out that the petitioner while referring to the other communities has employed the respectful expression ending with “ar” but while referring to the Dalits, he had employed the expression “Avan”. According to the complainant, this constitutes an intentional insult to the Scheduled Castes. The complainant sought issuance of direction under Section 156(3) of Cr.PC for registering an FIR against the petitioner herein.

Since the case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is triable only by the Special Court, the case was taken up for committal in PRC No.80 of 2014 and summons were issued to the petitioner herein. To quash the same, this criminal original petition has been filed by the petitioner under Section 482 of Cr.PC.

8. Heard the learned counsel on either side.

9. Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 had not been amended when the impugned complaint was filed. Unamended Section 3 (1) (x) of the Act read that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

10. I took the assistance of Shri. Jagannath, a young Tamil scholar from Madurai before deciding this issue. According to him, the expression "Avan" is referred to in Tamil literature more to indicate male gender and whether it is rude and disrespectful or not would depend more on the context. Right from Sangam Literature to current day, this expression has

been used to denote even highly revered characters. In Purananooru, Song No.72, a respected scholar is referred to as “மாங்குடி மருதன் தலைவனாக”. Thirukkural couplet 388 is as under :

“முறைசெய்து காப்பாற்றும் மன்னவன் மக்கட்கு
இறையென்று வைக்கப் படும்.”

In Thiruvasagam, the line “அவன் அருளாலே அவன் தாள் வணங்கி” is found. In Thiruvaimozhi by Nammalvar, the opening stanza reads as as under :

“உயர்வற உயர்நலம் உடையவன் யவன் அவன்
மயர்வற மதிநலம் அருளினன் யவன் அவன்
அயர்வறும் அமர்கள் அதிபதி யவன் அவன்
துயரறு சுடரடி தொழுதுளமுள் மனனே.”

In Periyapuranam, the phrase “உலகெலாம் உணர்ந்து ஒதற்கு அரியவன்” is found. Thus, even God is referred to only as “Avan”. Mahakavi Bharathi has this to say about certain communities :

“வேதமறிந்தவன் பார்ப்பான் - பல
வித்தை தெரிந்தவன் பார்ப்பான்
நீதிநிலை தவறாமல் - தண்ட நேமங்கள்
செய்வான் நாயக்கன்”.

The Tamil Poet Bharathidasan would describe his mentor as “பைந்தமிழ்த் தேர்ப்பாகன், அவன் ஒரு செந்தமிழ்த் தேனீ, சிந்துக்குத் தந்தை”. The foregoing literary instances, classical and modern, clearly show that the expression “Avan” is not an insulting connotation. On the other hand, it indicates a high degree

of intimacy.

11. There is one other aspect of the matter. The Hon'ble Division Bench of the Delhi High Court in the decision reported in **(2002) ILR 2 Del 237 (D.P.Vats vs. State)** holds that if an utterance is not directed against a member of SC/ST in contradistinction to a group of members of SC/ST or the community as a whole, it would not again make out an offence under Section 3(1)(x). The word "a member" occurring in the provision assumes crucial importance in this context and leaves no scope for doubt that it must be directed against the individual member and not against a group of members or the crowd or the public in general though these may comprise of SC/ST. If it is made in generalized terms against all and sundry and is not individual specific in the name of caste, it would not make out an offence under the first sub-section, the rationale being that intentional insult, intimidation and humiliation made in the name of caste was liable to be caused to a person and in this case to an individual member of SC/ST and not to a group of members or public in general.

12. Thus, looked at from any angle, even the elementary ingredients of Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989 Act are not present in the case on hand. The next

question is whether the *prima facie* ingredients of the offence under Section 504 of IPC are present. Section 504 of IPC reads as under :

Section 504. Intentional insult with intent to provoke breach of the peace -

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

13.The Hon'ble Supreme Court in the decision reported in **2013 (14) SCC 44 (Fiona Shrikhande vs. State of Maharashtra and Ors.)** held as follows :

“13.Section 504 Indian Penal Code comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of

Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult...”

14. Applying the aforesaid standard, by no stretch of imagination can the remarks of the petitioner be construed as an intentional insult to such a degree as to provoke a person to break the public peace. The petitioner had crossed the age of 90. To celebrate the occasion, a magazine interviewed the petitioner. It posed certain questions. The petitioner explained as to why he has not chronicled the lives of the members of the Scheduled Castes. The petitioner did not have any intention to hurt any one let alone the members of the Scheduled Castes. Therefore, the essential ingredients of Section 504 are not satisfied in this case.

15. It is true that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint. He has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. It is not his province to venture into a detailed discussion on the merits or demerits of the case. The Magistrate has to decide the question purely from the point of view of the complaint without at all advert to any defence that the accused may have. He is not expected to embark upon a detailed discussion.

16. But the above said yardstick and standard cannot be so mechanically applied even in matters that have clear and direct implications on free speech. This is because taking offence has now become a fashion. The magistrate will see if the allegations made in the complaint are so absurd on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. He will also see if the proceeding has been maliciously instituted with an ulterior motive. Following the registration of FIR by the Muzaffarpur Police, Ramachandra Guha had this to say :

“That Indian politicians, across party lines, have used colonial-era laws to suppress freedom of expression should not surprise anybody. What is more disappointing is that the judicial system has not done more to prevent this shrinking of democratic space. Motivated petitions aimed at pre-emptively shutting up democratic and independent voices assuredly have no place in a court of law. It is time the Supreme Court issued clear directions to lower courts so that this pernicious practice of intimidation stops.

Where politicians are increasingly governed by sentiments of revenge and retribution, citizens look to the judiciary to more actively play its Constitutional role as guarantors of liberty and free expression. In this regard,

the judges could refer to the maxim that Mahatma Gandhi offered in 1910, amended for our times as follows: “Every man [or woman] has a right to hold any opinion he chooses, and to give effect to it also, so long as, in doing so, he [or she] does not use [or advocate] physical violence against anybody.”

Neither the Magistrate nor the Police should exhibit alacrity to take cognizance or register a case in such matters. Every time they receive such complaints, they must dust their knowledge of the law relating to free speech. To start with, I would call upon every Magistrate to go through the celebrated decision reported in **(2016) (4) CTC 561 (Perumal Murugan'case)**, authored by Mr. Justice Sanjay Kishan Kaul as the Chief Justice of the Madras High Court (as His Lordship then was). They must also read the books **Offend, Shock or Disturb** by Gautam Bhatia and the **Republic or Rhetoric** by Abhinav Chandrachud. The courts must remember that whenever they play into the hands of people like the first respondent/complainant, the image of the judiciary as well as the nation takes a beating. Section 66-A of the Information Technology Act, 2000 was struck down as unconstitutional taking note of its chilling effect on free speech. Magistrates must realize that complaints such as the one on hand produce similar effect and lead to stifling of this fundamental freedom. They

must therefore be on guard and adopt a nuanced approach in such cases. One marker of a civilised society is as to how it treats and respects its artists, writers and intellectuals. Ki.Ra is now 97 years old. He lost his wife recently. He is said to have suffered a stroke. Closing the criminal proceedings initiated against him is the minimum courtesy that the system owes to him. I have already held that the elementary ingredients of the offences levelled against him are wholly absent. The very institution of the impugned prosecution is an abuse of legal process. It is quashed to secure the ends of justice. This criminal original petition stands allowed. MP(MD)No.1 of 2015 is closed.

16.10.2019

Index : Yes / No
Internet : Yes / No
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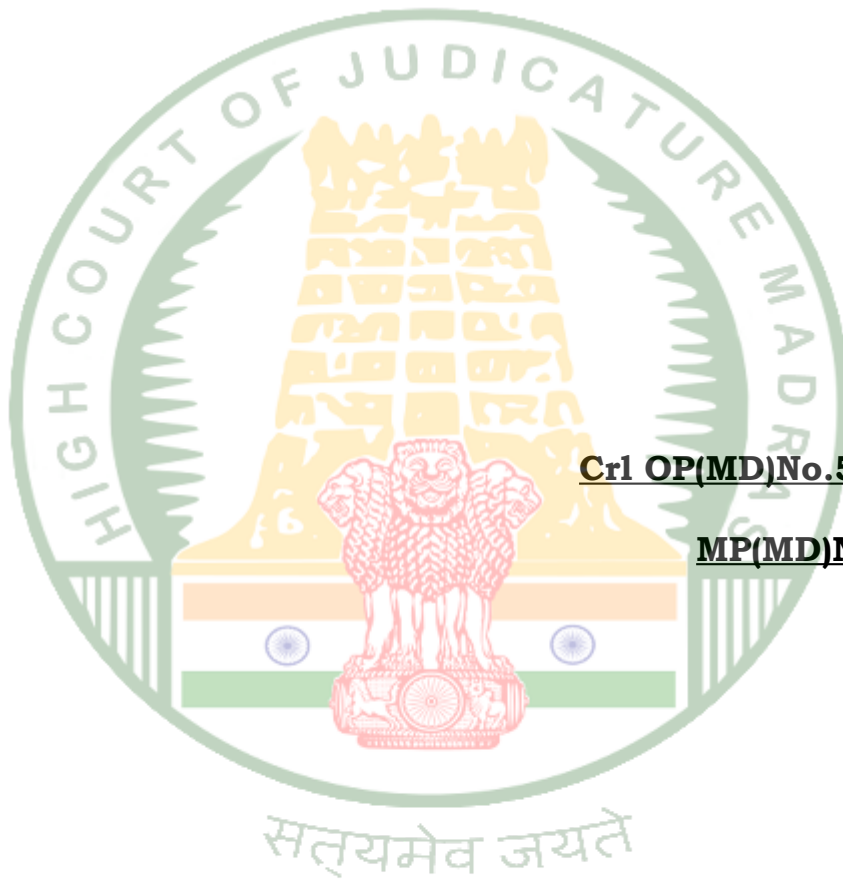
To

1.The Sub Inspector of Police,
Tallakulam Police Station,
Madurai – 625 002.

2.The Judicial Magistrate Court No.2, Madurai.

G.R.SWAMINATHAN, J.

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