

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.OP.No.18337 of 2020

Bar Council of Tamil Nadu and Puducherry
represented by its Secretary C.Rajakumar
High Court Buildings, NSC Bose Road
Chennai 600 104.

.. Petitioner

Versus

1.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai 600004.

2.The Commissioner of Police
No.132, Commissioner Office Building
EVK Sampath Road, Vepery
Chennai 600 007.

3.Assistant Commissioner of Police
Cyber Crime Cell,
Commissioner Office Complex
Vepery, Chennai 600 007.

..Respondents

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Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure seeking for a direction to direct the respondents to register a case against Mr.C.S.Karnan and Dr.M.Dhanasekaran based on the complaint of the petitioner dated 06.11.2020.

For Petitioner : Mr.S.Prabhakaran
Senior Advocate assisted by
Mr.C.K.Chandrasekaran

For Respondents : Mr.A.Natarajan
Public Prosecutor for State
assisted by
Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1) This Criminal Original Petition is filed by the Bar Council of Tamil Nadu and Puducherry, Chennai-104, which is a Statutory Body, praying for appropriate direction for registration of a case against Mr.C.S.Karnan – a former Judge of this Court and also against Dr.M.Dhanasekaran, based on their complaint / representation dated 06.11.2020 sent to the 2nd respondent in ROC.No.1632 of 2020.

(2) This petition was listed before the Hon'ble Judge dealing with the said roster and vide order dated 19.11.2020, the Hon'ble Judge has taken

note of the fact that the issues raised by the petitioner in this Criminal Original Petition as well as in WP.No.16181 of 2020, are found to be based on identical facts and circumstances of the case and directed the Registry to list the matter before the very same Division Bench, which has seized of the matter in WP.No.16181 of 2020, after obtaining necessary orders from the Hon'ble Chief Justice.

(3)The Registry has informed this Court that in pursuant to the orders of the Hon'ble Chief Justice dated 19.11.2020, this Criminal Original Petition was directed to be listed before this Bench.

(4)A mentioning was also made by Mr.C.K.Chandrasekaran, learned counsel for the petitioner by submitting that despite the complaint dated 06.11.2020 given by the Bar Council of Tamil Nadu and Puducherry , in ROC No.1632 of 2020 to the 2nd respondent as to the obnoxious behaviour etc., of Mr.C.S.Karnan, no action whatsoever has been taken for registration of the complaint, despite the contents of the said complaint / representation *prima facie* disclose commission of cognizable offences. In the light of the urgency pleaded by the learned counsel for the petitioner, this Court directed the Registry to list this Criminal Original Petition for physical hearing and accordingly, it is listed today in the afternoon hours on 23.11.2020.

(5)Mr.S.Prabhakaran, learned Senior Advocate, assisted by Mr.C.K.Chandrasekaran, learned counsel for the petitioner on record, has invited the attention of this Court to the contents of the representation / complaint dated 06.11.2020 submitted by the petitioner to the 2nd respondent with copies marked to [1] the Secretary General, Supreme Court of India, New Delhi-110 001,[2] the Registrar General, High Court of Madras, Chennai-104, [3] the Director General of Police, Dr.Radhakrisnan Salai, Mylapore, Chennai-600 004 [1st respondent herein] ; and [4] the Chief Secretary to Government [to be read as the Principal Secretary], Government of Tamil Nadu, Home Department, Chennai-600 009 and would submit that a former Judge of this Court, viz., Mr.C.S.Karnan, despite being punished by the Hon'ble Supreme Court of India in the decision reported in **2017 [7] SCC 1 [7 Judges]** in the matter of ***In Re Hon'ble Thiru Justice C.S.Karnan*** in Suo Motu Contempt Petition [C] No.1 of 2017, continue to indulge in obnoxious behaviour and repeatedly uploading videos through social media such as YouTube and Facebook with the help of one Dr.M.Dhanasekaran – the contents of the same would disclose that it is full of vulgarity, lacking in decency and decorum, defaming the former Judges of the Hon'ble Supreme

Court of India as well as some of the present sitting Judges of the Apex Court as well as this Court and that apart, the family members of them, especially the womenfolk are also targeted. Mr.C.S.Karnan, openly threatened that he will commit acts of physical violation [rape] upon them and despite such utterances, the 2nd respondent, who is the head of the Police force in the City of Chennai, has developed the cold feet and did not take any action on the said complaint dated 06.11.2020 given by the Bar Council of Tamil Nadu and Puducherry.

(6)The learned Senior Advocate has also drawn the attention of this Court to the above cited judgment and points out that the very same behaviour on the part of the same person resulted in suo motu initiation of the contempt proceedings wherein, for the first time and in the annals of history, a sitting Judge of the High Court, who held a Constitutional post, was sentenced to undergo imprisonment for a period of six months and he has also undergone the sentence. The learned Senior Counsel invited the attention of this Court to the order dated 09.05.2017, which also form part of the main order, wherein, in paragraph No.86, it is observed that ***"since the incident of contempt includes public statements and publication of orders made by the contemnor, which were highlighted by the electronic and print***

media, we are of the view, that no further statements made by him should be published hereafter. Ordered accordingly." and despite such a direction, Mr.C.S.Karnan continues to indulge in uncharitable tirade by using abusive, derogatory threatening, unparliamentary and vituperative language. It is the further submission of the learned Senior counsel that this Court, vide interim order dated 10.11.2020 made in WMP.No.20195 of 2020 in WP.No.16181 of 2020, while granting interim orders as to the blocking of uploading of the said messages in social media platforms, also observed that acts of the concerned person, *prima facie* constitute commission of cognizable offences and despite that, no case has been registered by the jurisdictional police which comes under the control of the 2nd respondent. The learned Senior counsel, by way of legal submission, would submit that in the light of the authoritative pronouncement rendered by the Constitution Bench of the Hon'ble Supreme Court of India in *Lalithakumari Vs. State of Uttar Pradesh and Others* reported in *2014 [2] SCC 1*, the 2nd respondent is under mandate to direct the concerned subordinate official to register a case as the contents of the complaint / representation dated 06.11.2020 constitute commission of cognizable offences and since the said official has not

done so, he can be hauled for contempt of the orders passed by the Apex Court also. The learned Senior counsel, in support of his submissions, has also placed reliance upon the judgment rendered by a Full Bench of the High Court of Bombay reported in **2019 [1] MHLJ 252 – Bombay High Court on its own motion Vs. Ketan Tirodkar** and prays for appropriate direction, directing the Commissioner of Police to suitably instruct the concerned jurisdictional police to register a First Information Report and proceed further in accordance with law.

- (7) Notices to the respondents through Court as well as privately returnable on 30.11.2020.
- (8) Mr.S.Karthikeyan, learned Additional Public Prosecutor accepts notice on behalf of the respondents and he is being led by Mr.A.Natarajan, learned Public Prosecutor appearing for the State.
- (9) The Investigating Officer, viz., Mrs.C.Uma Devi, Inspector of Police, Cyber Crime, CCB, Chennai, is also personally present before this Court for rendering necessary assistance to the learned Public Prosecutor.
- (10) Mr.A.Natarajan, learned Public Prosecutor has submitted a Note on case against Mr.C.S.Karnan, a retired Judge of this Court along with supporting documents, though not in the form of typed set of

documents and made a submission that on the basis of the complaint given by one Ms.Devika, Advocate, the Central Crime Branch has registered a case in Crime No.294 of 2020, for the alleged commission of the offences under Sections 153 and 509 of IPC on 26.10.2020 and took up the case for investigation and during the course of investigation, it was found that the speech / utterances of Mr.C.S.Karnan, had been uploaded in YouTube channel by Dr.M.Dhanasekaran and a request was also sent to the said social media for deleting the uploads and all the video contents in the YouTube channel were also collected in terms of the Indian Evidence Act and reminder requests were also sent to the YouTube to delete the contents on 06.11.2020 and accordingly, 2 URLs were removed from the YouTube channel in which the uploading was done by Dr.M.Dhanasekaran. In the light of the interim orders passed by this Court in WP.No.16181 of 2020, reminder request was also sent to the said channel to delete the contents and blocking the YouTube channel of Dr.M.Dhanasekaran on 12.11.2020 along with the interim order and apart from that statements of Advocates, viz., Tmt.Sudha Ramalingam, Ms.R.Vaigai, designated Senior Advocates and Ms.Anna Mathew, were recorded. In the light of the materials collected during

investigation, the sections were altered into one of Sections 228, 509, 294[B] and 506[ii] of IPC ; Section 67-A of the Information Technology Act, 2000, Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 1998 and Section 4 of the Tamil Nadu Indecent Representation of Women [Prohibition] Act, 1986, on 12.11.2020. Further steps were also taken to locate the voice samples of Mr.C.S.Karnan, the former Judge of this Court, and 15 of his videos uploaded in YouTube by Dr.M.Dhanasekaran, were also deleted on 15.11.2020.

(11)It is the further submission of the learned Public Prosecutor that despite the same, Mr.C.S.Karnan, continue to give speeches and 8 new videos in that regard were once again uploaded by Dr.M.Dhanasekaran in the YouTube channel and that apart, 4 videos in another channel by name "*Ambedkar Army ACDP [Anti Corruption Dynamic Party]*", which came to the notice of the Investigating Officer between 13.11.2020 and 15.11.2020. The said person also created a new channel in his own name and uploaded two videos and once again, request was made to delete the videos and block the channels on 16.11.2020.

(12)According to the learned Public Prosecutor, on instructions from the

Investigating Officer who is present before this Court, all the video posts of Mr.C.S.Karnan, have been deleted from the YouTube channel as per the request and the said uploading done by Dr.M.Dhanasekaran, in the YouTube channel, has also been blocked on 17.11.2020 as per request ; the verbatim transcription of the contents of the entire videos have also been done in the form of statements and on 18.11.2020, a request has also been sent to CERT to block the remaining channels and to remove the contents through the Nodal Officer, Superintendent of Police, Cyber Crime Division, Mylapore, Chennai-4. The further Alteration Report was also filed on the file of the jurisdictional Magistrate, viz., the III Metropolitan Magistrate, George Town Court, on 19.11.2020, arraying Dr.M.Dhanasekaran, as an accused by invoking Section 120-B of IPC along with other sections. Insofar as the complaint given by the petitioner / Bar Council of Tamil Nadu and Puducherry is concerned, it is the submission of the learned Public Prosecutor that since the contents of the same would disclose the same as that of the case in CCB Crime No.294 of 2020, registered by the Central Crime Branch, no further FIR has been registered and in stead, the complainant in the representation / complaint dated 06.11.2020, would be examined as one of the witnesses and in fact, the statement

of Mr.C.Rajakumar, Secretary, Bar Council of Tamil Nadu and Puducherry, has also been recorded.

(13)The learned Public Prosecutor also prays for short accommodation to file a detailed counter affidavit with supporting documents as to the effective steps / action taken in the light of the complaints received in this regard and further points out that since the offences for which the case has been registered, are punishable with less than seven years, Notices under Section 41-A of the Code of Criminal Procedure have been served upon both the accused, viz., Mr.C.S.Karnan and Dr.M.Dhanasekaran, on 22.11.2020 and Mr.C.S.Karnan – the 1st accused, had acknowledged the said notice. The notice dated 22.11.2020 under Section 41-A of Cr.P.C., was sent through post to the 2nd accused, viz., Dr.M.Dhanasekaran, for his appearance on 26.11.2020 and the statements already recorded, were also submitted to the jurisdictional Magistrate Court today [23.11.2020]. It is also the submission of the learned Public Prosecutor that whatever directions this Court would issue, it would be complied with by the respondents 1 to 3 and the investigation of the case would also be monitored by the Commissioner of Police himself and that apart, the Director General of Police would also look into the matter in the light of the sensitive

nature of the issues involved, especially the utterances would definitely undermine the dignity, majesty and honour of the Institution, which is also one of the important pillars of the democracy.

(14) This Court paid its best attention to the arguments advanced by Mr.S.Prabhakaran, learned Senior Advocate assisted by Mr.C.K.Chandrasekaran, learned counsel for the petitioner and Mr.A.Natarajan, learned Public Prosecutor assisted by Mr.S.Karthikeyan, learned Additional Public Prosecutor and also perused the materials placed before it.

(15) It is to be stated at this juncture that the Bar and Bench are two sides of the same coin and therefore, the Bar Council of Tamil Nadu and Puducherry has rightly taken up the cause as the repeated utterances by the 1st accused, viz., Mr.C.S.Karnan, would undermine the dignity, reputation, honour and majesty of the Institution, for which the lawyers also form part. It is also the submission of the learned Senior counsel appearing for the petitioner that in some of the videos uploaded, the 1st accused, viz., Mr.C.S.Karnan, also made repeated statements admitting the commission of the offences and also castigated as to why no action has been taken against him despite such utterances.

(16) During the course of arguments, it is also pointed out to the learned Public Prosecutor that the contents of 35 and odd videos uploaded would defame, denigrate the concerned persons and it may constitute a successive / different cause of action and it is the response of the learned Public Prosecutor that necessary and suitable advise be given to the Investigating Officer in this regard. Attention of the learned Public Prosecutor was also invited to Chapter XIII Section 80 of the Information Technology Act, 2000, which speaks about the power of the police officer and other officials to enter and search etc., and it is the response of the learned Public Prosecutor that steps would be taken in that regard after appearance of both the accused before the Investigating Officer on 26.11.2020.

(17) It is very pertinent to point out at this juncture that under Section 149 of Cr.P.C., it is the duty of the police to prevent cognizable offences and therefore, it is not necessary on the part of the police to wait for the commission of the offences and prevention is always better than cure. The investigation of the case/s registered in this regard, shall be monitored by the second respondent and be supervised by the first respondent.

(18)Call on 30.11.2020 at 2.15 p.m. through Physical Hearing and on that day, the 2nd respondent, viz., the Commissioner of Police, No.132, Commissioner Office Building, EVK Sampath Road, Vepery, Chennai 600 007, shall file a counter affidavit with supporting documents.

[MSNJ] [RHJ]
23.11.2020

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NOTE:-Communicate the above order to the respondents and also upload the same in the website.

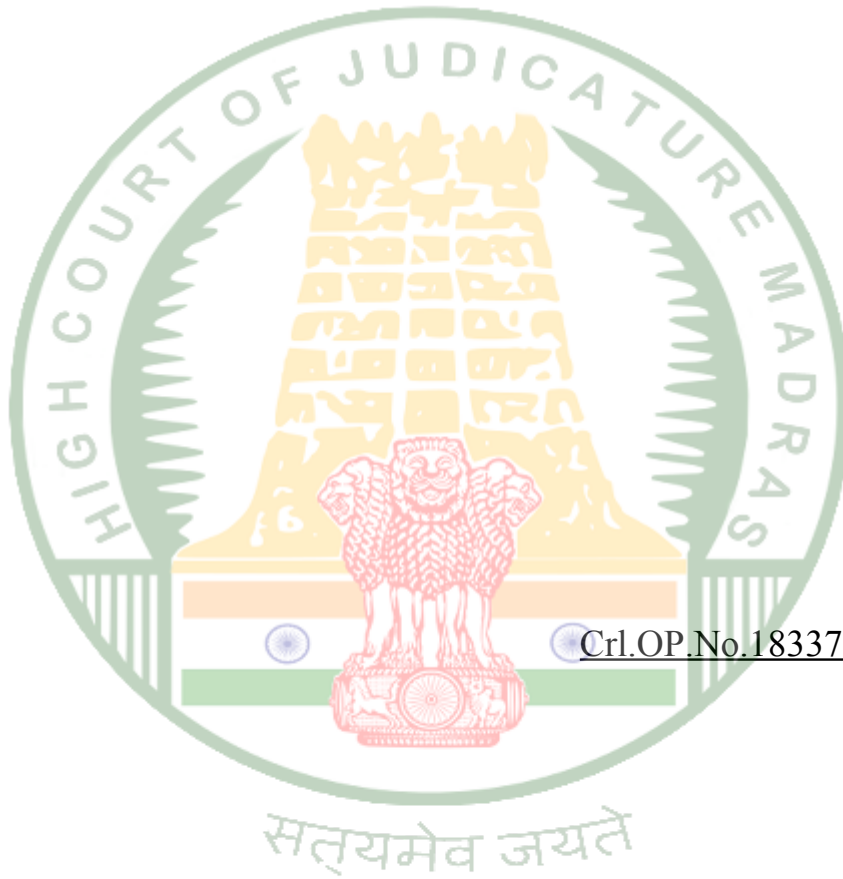
To

- 1.The Director General of Police
Dr.Radhakrishnan Salai
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M.SATHYANARAYANAN, J.,
AND
R.HEMALATHA, J.,

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