

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2020

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

**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.S.Karthikeyan  
Additional Public Prosecutor

**ORDER**

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

(1)This Court, in continuation and in conjecture with the earlier order dated 23.11.2020, is passing the following order.

(2)Mr.S.Prabhakaran, learned Senior Advocate assisted by Mr.C.K.Chandrasekaran, learned counsel for the petitioner has drawn the attention of this Court to the counter affidavit dated 30.11.2020, filed by the 2<sup>nd</sup> respondent herein, viz., the Commissioner of Police and made the following submissions:-

- The complaint of Ms.Devika, Advocate, dated 25.10.2020 sent through online, was registered as a case in Crime No.294 of 2020

by the Central Crime Branch of Greater Chennai Police, under Sections 153 and 509 of IPC on 26.10.2020 against Mr.C.S.Karnan, a former Judge of this Court.

- In WP.No.16181 of 2020 filed by the Bar Council of Tamil Nadu and Puducherry, the petitioner herein, seeking for the relief of a writ of mandamus, directing the respondents 1 to 5 therein, to initiate appropriate legal action including criminal law action against respondents 9 and 10 therein, based on the representation/complaint dated 06.11.2020, this Court, vide order dated 10.11.2020, has granted an order of ad-interim direction and the said order has also been communicated to the official respondents therein, which include respondents 1 to 3 herein, who are arrayed as respondents 3 to 5 in the writ petition.
- The present Criminal Original Petition was filed on 18.11.2020 and came up for hearing on 23.11.2020 and just one day earlier to the hearing of this Criminal Original Petition, the Investigating Officer has sent a notice dated 22.11.2020 under Section 41-A of the Code of Criminal Procedure [hereinafter referred to as "CrPC"] to Mr.C.S.Karnan and Dr.M.Dhanasekaran, for their appearance on 26.11.2020.

- In paragraph No.9 of the counter affidavit filed by the 2<sup>nd</sup> respondent herein, it is stated that on 26.11.2020, Mr.C.S.Karnan, a former Judge of this Court and Dr.M.Dhanasekaran, appeared before the Investigating Officer and during interrogation, they admitted the commission of the offence and the Investigating Officer obtained an assurance from Mr.C.S.Karnan, not to publish / upload further videos.
- A second notice under Section 41-A of CrPC was served upon Mr.C.S.Karnan and Dr.M.Dhanasekaran, for their appearance on 28.11.2020 for further interrogation and they also appeared and gave their statements.
- If at all the Central Crime Branch exhibited some urgency and promptness in proceeding with the investigation in Crime No.294 of 2020, which came to be registered on 26.10.2020, several videos containing vituperative, abusive, filthy, obscene and unparliamentary words used by Mr.C.S.Karnan, against former Judges and Sitting Judges of the Hon'ble Supreme Court of India, their family members and also the former Judges and Sitting Judges of this Court, would not have come in public domain and as a result of the inapt action exhibited by the Investigating Agency, the name

and reputation of the said persons came down considerably. It is not in all cases that Section 41-A of CrPC is resorted to by the police and even in cases where the offences are punishable less than seven years, arrests are being made if it involve some political bigwigs and Section 41-A of CrPC is selectively resorted to.

- Section 149 read with 151 of CrPC speak about police to prevent cognizable offences and arrest to prevent commission of cognizable offences and despite the admission made in paragraph No.9 of the counter affidavit by the 2<sup>nd</sup> respondent that during interrogation, the two accused, viz., Mr.C.S.Karnan and Dr.M.Chandrasekaran, had admitted the commission of the offence, still further steps have not been resorted to by the Investigating Officer for the reasons best known to her.
- The investigation so far carried out, is only an eyewash and in the light of the lackadaisical and disinterested attitude exhibited by the Investigating Officer as well as the Greater Chennai City Police, no useful purpose would be served by asking them to continue with the investigation and in the light of the commission of very serious cognizable offence, which tend to affect the honour and majesty of the Institution, viz., the Hon'ble Supreme Court of India and High

Court, this Court may constitute a Special Investigation Team consisting of efficient officers and shall oversee the investigation also.

(3)The learned Senior Advocate, in support of his contentions, has placed reliance upon the judgment of the Apex Court reported in **2006 [8] SCC 433 [Director General, Directorate of Doordharshan and Another Vs. Anand Patwardhan and Another]** as well as the decision rendered by a Division Bench of the Karnataka High Court reported in **ILR 1999 Karnataka 674 [High Court of Karnataka V. K.Sankaran Nayar and Others]**.

(4)**Per contra**, Mr.S.Karthikeyan, learned Additional Public Prosecutor assisted by Mrs.C.Uma Devi, Inspector of Police, Cyber Crime Branch, Chennai, who is also personally present before this Court, by drawing the attention of this Court to the statements of Mr.C.S.Karnan dated 26.11.2020 and 28.11.2020 respectively as well as to the counter affidavit of the 2<sup>nd</sup> respondent dated 30.11.2020, would submit that prompt, immediate and necessary action has been taken and in fact, a search was also conducted in the family house of Mr.C.S.Karnan in Gateway Apartments, Sowrashttra Nagar, Choolaimedu, Chennai-1 and it also led to seizure of some incriminating articles. Insofar as the house

of the 2<sup>nd</sup> accused, viz., Dr.M.Dhanasekaran, is concerned, it was found locked and therefore, search was unable to be conducted on 27.11.2020 and the said house has been sealed and necessary steps would be taken to open the premises and collect the incriminating articles found if any, in the said premises. The learned Additional Public Prosecutor appearing for the State would also submit that the seized documents and materials have have deposited on the file of the Court of III Metropolitan Magistrate, George Town, Chennai through Form-91 on 27.11.2020 and that apart, 33 videos containing verbal abuses have been deleted. Moreover, the voice samples of both the accused, viz., Mr.C.S.Karnan and Dr.M.Dhanasekaran, were also collected and the house of Dr.M.Dhanasekaran at Kanchipuram, was subsequently searched and one computer CPU and some posts of Anti Corruption Dynamic Party [ACDP] were also seized and the seized articles have been sent to the Tamil Nadu Forensic Sciences Laboratory through the jurisdictional Court for analysis and the investigation of the case is in progress and proceeding on the right lines.

(5)The learned Additional Public Prosecutor also produced the statements recorded from Mr.C.S.Karnan, on 26.11.2020 and 28.11.2020 respectively, in a sealed cover.

(6) This Court has considered the rival submissions and also perused the materials placed before it.

(7) A Single Bench of this Court in the decision reported in **2019 [1] CTC 497 [State rep.by the Inspector of Police, D4 Zam Bazaar Police Station, Chennai-14 V. Tr.Nakeeran Gopal]** has considered the scope of Sections 167 and 41-A of CrPC and also taken into consideration, the often quoted judgments rendered by the Apex Court reported in **2014 [8] SCC 273 : AIR 2014 SC 2756 [Arnesh Kumar V. State of Bihar]** and **AIR 1994 SC 1349 [Joginder Kumar V. State of Uttar Pradesh and Others]** and laid down the proposition.

(8) A Learned Single Judge of this Court [Hon'ble Mr. Justice M.DHANDAPANI], vide order dated 29.01.2020 made in CrI.OP.No.34166 of 2019, taking note of the cheap publicity and scandalous acts as well as defamatory, abusive and unsubstantiated statements by unscrupulous elements against individuals, especially, against a Constitutional Authority, a Government Official or any person holding the high office, thought fit to issue the following directions and it is relevant to extract the same:-

*"10 Accordingly, this Court directs the Director General of Police, the head of the State Law Enforcing Agency to constitute a separate,*

*dedicated and special cell in each Station House, both at the District Level as well as at the State Level forthwith. The officers, who are deputed/posted at such of those centres/special cells be imparted with all crafts and taught the necessary tricks of the trade that are necessary for tracking the unscrupulous offenders, who post such filthy and derogatory messages/videos in the social media, so that they can quickly and diligently take action against such offenders and prevent untoward incidents from happening so that not only the constitutional authorities and the other high officials, both at the Centre and State can discharge their day-to-day functions in accordance with law without any fear or favour, but also the common man can lead a peaceful life in social harmony and that all the individuals in the society are nurtured with good values and the Nation will stand uplifted in the eyes of the global community.*

*11.The Director General of Police is directed to adhere to the directions, passed above, by constituting necessary special cells as expeditiously as possible, not later than two months from the date of receipt of a copy of this order and report compliance to this Court. List the matter on 30.03.2020 for reporting compliance of the above order."*

(9)It is to be noted at this juncture that though the order came to be passed as early as on 29.01.2020 by directing the 1<sup>st</sup> respondent herein to do the needful, not much headway appears to have been done. It also *prima facie* appears that Section 41-A of CrPC is selectively resorted to and it is not as if in respect of offences which are punishable seven years and below. The procedure contemplated under Section 41-A of CrPC is resorted to in the light of sub-section [3] of Section 41-A of CrPC, 1973 and it is relevant to extract the same:-

**41-A: Notice of Appearance before Police**

**Officer:-**

.....

*[3]Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.*

(10)The counter affidavit filed by the 2<sup>nd</sup> respondent, especially paragraph No.9, would disclose that during the course of interrogation, in pursuant to the notice issued under Section 41-A of CrPC, Mr.C.S.Karnan, appeared before the Investigating Officer on 26.11.2020 and 28.11.2020

respectively and admitted the commission of the offence. In paragraph No.15 of the counter affidavit, it is stated that the investigation of the case is in progress.

(11)It is very pertinent to point out at this juncture that if a preventive action would have been taken at an appropriate time, videos numbering 33, would not have been uploaded and it also appears that incalculable damage has been done to the honour and reputation of the former Judges as well as some of the Sitting Judges of the Apex Court as well as this Court and that apart, to their family members, especially, the women-folk.

(12)In the light of the above facts and circumstances, especially in the light of the order dated 29.01.2020 made in Crl.OP.No.34166 of 2019, this Court requires the presence of respondents 1 and 2 for rendering necessary and effective assistance to this Court.

(13)Call on **07.12.2020 at 2.15 p.m. through physical hearing.** On that day, **respondents 1 and 2, viz., the Director General of Police as well as the Commissioner of Police, shall personally remain present before this Court with all necessary and relevant documents, to render necessary and effective assistance to this Court.**

(14)The two statements of Mr.C.S.Karnan dated 26.11.2020 and 28.11.2020 respectively, submitted by the learned Additional Public Prosecutor, shall be kept in the sealed covers and be in the custody of the Registrar [Judicial] of this Court and it shall be produced before this Court on the next date of hearing, i.e., on 07.12.2020.

[MSNJ] [RHJ]  
30.11.2020

AP

**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  
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.
- 4.The Public Prosecutor  
High Court, Madras.

**COPY TO:-** The Registrar [Judicial], High Court, Madras.

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M.SATHYANARAYANAN, J.,  
AND  
R.HEMALATHA, J.,  
AP

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30.11.2020