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Crl.O.P.No.4197 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 24.08.2023

PRONOUNCING ORDERS ON : 29.08.2023

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH**Criminal Original Petition No.4197 of 2022**
& Crl.MP.Nos. 2098 and 2100 of 2022

H.Raja, M/A-64

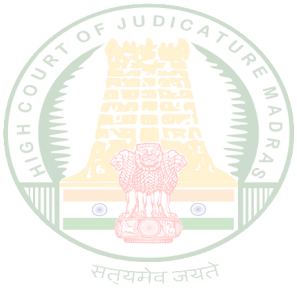
Ex.M.L.A, National Secretary for BJP.

S/o.Hariharan

.. Petitioner /Accused

..Vs..

1.The State Rep.by
Inspector of Police
Erode Town Police Station
Erode District...1st Respondent/Complainant2.Selvaraj, Ex-Minister
State Welfare Committee Secretary
Dravida Munnetra Kazhagam
Nallanthozuvu
Modakurichi Tk, Erode...2nd Respondent/ De facto Complainant**Prayer:** Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to call for the proceedings in S.T.C.No.310 of 2021, on the file of the Judicial Magistrate-II, Erode and quash the same.For Petitioner : Mr.R.C.Paul Kanagaraj
for Mrs.P.J.AnithaFor Respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor for R1



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ORDER

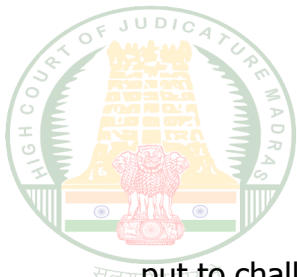
This criminal original petition has been filed challenging the proceedings pending in STC.No.310 of 2021, on the file of the learned Judicial Magistrate No.II, Erode.

2.The case of the prosecution is that on 18.4.2018, the petitioner in his twitter account tweeted as follows:

“தன் கள்ள உறவில் பெற்றெடுத்த கள்ளக் குழந்தை (illegitimate child) மாநிலங்களவை உறுப்பினராக்கிய தலைவரிடம் ஆளுநரிடம் கேட்டதுபோல் நிருபர்கள் கேள்வி கேட்டார்களா, மாட்டார்கள். சிதம்பரம் உதயகுமார் அண்ணாநகர் ரமேஷ், பெரம்பலூர் சாதிக் பாட்ஷா நினைவு வந்து பயமுறுத்துமே,”

3.The above tweet related to the former Chief Minister of State of Tamil Nadu and his daughter and since it tarnished the image of the former Chief Minister and his daughter, who was also as a Member of Parliament and has brought down their reputation and image in the eyes of the general public and had the propensity to create unrest among the followers and lead to a law and order situation, one of the Ex-Minister, who is an office bearer of DMK party gave a Complaint before the respondent Police. Based on the same, an FIR came to be registered in Crime No.848 of 2018 on 20.9.2018.

4.The investigation was taken up pursuant to the registration of the FIR and the statements of the witnesses were recorded and after collecting the necessary materials, the final report came to be filed before the Court below and the Court below took cognizance of the final Report for offence u/s.153, 504 and 509 IPC. The same has been



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put to challenge in the present criminal original petition.

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5.Heard Mr.R.C.Paul Kanagaraj, learned counsel for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for State (R1).

6.It was contended that even if the contents of the tweet is taken as it is, it only indicts a particular person and his daughter and they can only be the aggrieved person and the Complainant does not have the *locus standi* to set the law in motion. It was further submitted that what was tweeted by the petitioner was a fact and it was not motivated and in fact the Complaint is politically motivated. The learned counsel further submitted that no offence has been made out even if the case of the prosecution is taken as it is. It was further contended that the investigation did not even find out as to whether the petitioner maintained such a twitter account and as to who has actually posted such a tweet. Accordingly, the learned counsel sought for quashing of the proceedings pending before the Court below.

7.In the instant case, it must be borne in mind that the petitioner was a former member of the Legislative Assembly and he also holds an important position in a national party and he has many followers. Therefore, whatever is said/tweeted by the petitioner will have a larger reach and it will also create an impact in the minds of the general public.

8.It must also be kept in mind that the tweet message pertained to the late former



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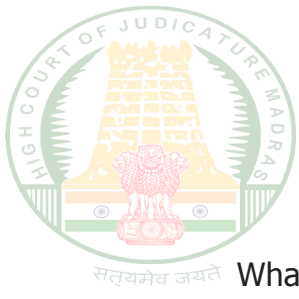
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Chief Minister of the State of Tamil Nadu and who is considered to be one of the most important driving force of the Dravidian movement. The people of Tamil Nadu carry a lot of respect for this leader and any damaging messages on the leader will have a negative impact in the society and will certainly create disturbance in the State of Tamil Nadu. That part, the message also touches upon his daughter, who is a sitting Member of Parliament and the message on the face of it, characterises her as an illegitimate child. Such characterisation has a negative connotation and it virtually bastardizes the daughter of the former Chief Minister. Hence, such a comment/message will certainly cause disturbance and disruption in public peace. That apart, it also outrages the daughter of the former Chief Minister and portrays her in an insensitive manner intending to insult the daughter of the former Chief Minister. This is done through tweeting the message from the twitter account of the petitioner.

9.This Court must necessarily take judicial notice of the fact that the petitioner has the proclivity to make irresponsible and damaging comments and that is the reason why he gets into trouble. This Court is reminded of the sagacious words of Thiruvalluvar where he says,

யாகாவார் ஆயினும் நாகாக்க காவாக்கால்
சோகாப்பர் சொல்லிழுக்குப் பட்டு

To put it in simple English-



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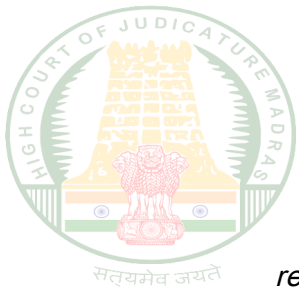
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Whatever besides you leave unguarded, guard your tongue; otherwise errors of speech and the consequent misery will ensue. This warning given by Thiruvalluvar perfectly applies to the petitioner.

10. In the considered view of this Court, the Complainant who belongs to the political party of the former Chief Minister and the sitting Member of Parliament, has the *locus standi* to maintain such a complaint since insinuation does not merely touch upon the personal characterisation of two individuals, but also affects the sentiment and respect held by the persons belonging to the concerned political party and also the people of Tamil Nadu in general.

11. In a way, the message that was tweeted by the petitioner borders around hate speech and this Court is reminded of the judgment of the Apex Court in **Kaushal Kishor v. State of U.P.** reported in **(2023) 4 SCC 1** and the relevant portion is extracted hereunder:

251. Every citizen of India must consciously be restrained in speech, and exercise the right to freedom of speech and expression under Article 19(1)(a) only in the sense that it was intended by the Framers of the Constitution, to be exercised. This is the true content of Article 19(1)(a) which does not vest with citizens unbridled liberty to utter statements which are vitriolic, derogatory, unwarranted, have no



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redeeming purpose and which, in no way amount to a communication of ideas. Article 19(1)(a) vests a multi-faceted right, which protects several species of speech and expression from interference by the State. However, it is a no brainer that the right to freedom of speech and expression, in a human-rights based democracy does not protect statements made by a citizen, which strike at the dignity of a fellow citizen. Fraternity and equality which lie at the very base of our constitutional culture and upon which the superstructure of rights are built, do not permit such rights to be employed in a manner so as to attack the rights of another.

12.The person holding a responsible post in a national party can comment upon the policies and short comings of the opposition party and its leaders. However, such a comment should not touch upon the personal character/status and such a comment definitely will have the propensity to cause disturbance in the society and may also lead to a law and order problem. The words are powerful than swords and whereas the sword will cause injury to an individual but words can create a very serious impact over a large section of people. Unfortunately, the petitioner did not realise that his comments in the tweet, will result in the commission of a criminal offence. There is no serious dispute regarding the fact that such a message was tweeted from the twitter account of the petitioner. The petitioner also did not refute that he did not send such a message, at



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any point of time. The available materials certainly makes out an offence against the petitioner and there is no ground to interfere with the proceedings pending before the Court below.

13.It is left open to the petitioner to raise all grounds before the Court below and the same will be considered on its own merits and in accordance with law. Any observation made in this order will not have any bearing on the Court below and the Court below will independently apply its mind.

14.In the light of the above discussion, this criminal original petition stands dismissed. The proceedings pending before the Court below shall be transferred to the Special Court for MP/MLA Cases, Erode, within a period of four weeks from the date of receipt of copy of this order. The Special Court shall complete the proceedings within a period of three months, thereafter. Consequently, connected miscellaneous petitions are closed.

29.08.2023

Index : Yes
Internet : Yes
Neutral Citation: Yes
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To

- 1.The Inspector of Police
Erode Town Police Station
Erode District.
- 2.Selvaraj, Ex-Minister
State Welfare Committee Secretary
Dravida Munnetra Kazhagam
Nallanthozuvu
Modakurichi Tk, Erode.
3. Judicial Magistrate-II
Erode.
- 4.Special Court for MP MLA Cases
Erode.
- 5.Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH,J.
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Pre-Delivery Order in
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