

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
22.09.2021	28.09.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 979 OF 2018

AND

CRL. M.P. NO. 339 OF 2018

Tmt. Dr.Tamilisai Soundararajan .. Petitioner

- Vs -

Dhadi K.Karthikeyan .. Respondent

Criminal Original Petition filed u/s 482 Cr.P.C. praying this Court to quash
C.C. No.212/2017 on the file of the learned Judicial Magistrate No.I,
Kancheepuram.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

This matter has been repeatedly listed before this Court atleast on four occasions and there was no representation for the parties. On the last occasion on 9.8.2021, the matter was directed to be listed under the caption "For Dismissal". In spite of very many opportunities granted, when the matter is listed

on 22.09.2021, there is no representation for the parties. In view of the fact that the matter pertains to the year 2017, this Court has taken up the matter and decided to decide the same on merits.

It is the case of the respondent that the petitioner, being the State President of the Bharathiya Janata Party, while giving an interview to the electronic and print media, had termed the Viduthalai Chiruthaigal Katchi and its head, to which party the respondent belongs as a party which is conducting Kangaroo Courts and also abducting the lands from the public and has uttered the derogatory remarks against the political party and its head. On the said averments, private complaint has been filed by the petitioner invoking Section 199 r/w 200 of the Code of Criminal Procedure before the Judicial Magistrate No.I, Kancheepuram, which has been entertained as C.C. No.212/17 and taken on file by issuing summons to the petitioner. Aggrieved by the said summons and cognizance taken by the court below, the present petition has been filed seeking quashment of the said case.

As stated above, inspite of repeated adjournments, this Court has not seen the light at the end of the tunnel by way of the respective learned counsel

appearing for the parties. In the aftermath of the long pending nature of the case and further the facts of the case and the documents, which stares on the face of the record, warrants disposal of this case on appreciating the merits and documents available in the typed set, this Court proceeds to dispose of the case without further delaying the disposal of the matter for the presence of the learned counsel for the parties.

It is the pointed averment of the petitioner that though the petition has been filed for the offence u/s 500 IPC, but curiously the summons have been issued by the court below directing the petitioner to appear in relation to an offence u/s 138 of the Negotiable Instruments Act, which is not only ridiculous, but clearly shows the non-application of mind on the part of the court below in taking cognizance of the issue by issuing summons.

It is the further averment of the petitioner that in no way the complainant is affected by the alleged innuendos of the petitioner and further no iota of evidence is also placed before the court below to show that the petitioner has made any such statement before the print and electronic media. It is the further averment of the petitioner that no authorization, whatsoever, has been filed by

the respondent to show that he has been authorised by the party President Thol.Thirumavalavan to file the private complaint on behalf of the party as also the party President. It is the further averment of the petitioner that the private complaint filed by the petitioner is only to gain popularity with the party and its President and the said private complaint, without the necessary authorisations, is nothing but an abuse of process of law, contrary to the weight of evidence and not substantiated by facts and materials.

It is the further averment of the petitioner that there is no *prima facie* case warranting issuance of the summons, which too have been issued wrongly, making the whole process a nullity, which is liable to be quashed. It is further averred that no material in the form of electronic and print material has been filed to support the complaint filed by the petitioner. On the above grounds, the petitioner has filed the present petition for quashment of the abovesaid case.

As stated above, the respondent has not thought it fit to appear before the court to contest the case, except filing the private complaint and having summons issued. Therefore, in the absence of the respondent, the complaint

filed by the respondent is taken on record, which resulted in the issuance of the summons by the trial court.

This Court gave its anxious consideration to the averments in the petition as well as in the complaint filed by the respective parties to the *lis*.

True it is that the Constitution has provided guarantee for freedom of speech and expression, which are part of the fundamental rights enshrined in the Constitution. Equally true it is that the said right of freedom of speech and expression are subject to reasonable restrictions as held by the Hon'ble Apex Court in ***Subramanian Swamy – Vs - Union of India (2016 (7) SCC 221)***. There can be no two different views on the above aspect, which has been well settled by a catena of decisions by the Hon'ble Supreme Court as well as this Court and, therefore, this Court is not inclined to add to it any further, but to state that while right to freedom of speech and expression are guaranteed under the Constitution, but, however, the same are subject to reasonable restrictions.

Chapter XXI IPC deals with 'Defamation' and takes within its fold Sections 499, 500, 501 and 502 IPC. Section 499 IPC deals with 'Defamation', while

Sections 500 and 501 IPC provides for punishment for defamation. To attract the punishment contemplated u/s 500 and 501 IPC, defamation u/s 499 IPC should be made out. For better clarity, Section 499 IPC is quoted hereunder :-

“499. Defamation —

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.”

The law on defamation has been dealt with extensively by the Hon'ble Apex Court in ***Subramanian Swamy – Vs - Union of India (2016 (7) SCC 221)***, advertng to various facets of defamation. One of the main contention raised in the said case relates to 'Reasonable Restriction' found in Article 19 (1) of the Constitution and in that context, the Hon'ble Apex Court held as under :-

“130. The principles as regards reasonable restriction as has been stated by this Court from time to time are that the restriction should not be excessive and in public interest. The legislation should not invade the rights and should not smack of arbitrariness. The test of reasonableness cannot be determined by laying down any abstract standard or general pattern. It would depend upon the nature of the right which has been infringed or sought to be infringed. The ultimate “impact”, that

is, effect on the right has to be determined. The "impact doctrine" or the principle of "inevitable effect" or "inevitable consequence" stands in contradistinction to abuse or misuse of a legislation or a statutory provision depending upon the circumstances of the case. The prevailing conditions of the time and the principles of proportionality of restraint are to be kept in mind by the court while adjudging the constitutionality of a provision regard being had to the nature of the right. The nature of social control which includes public interest has a role. The conception of social interest has to be borne in mind while considering reasonableness of the restriction imposed on a right. The social interest principle would include the felt needs of the society.

* * * * *

131. As the submissions would show, the stress is given on the right to freedom of speech and expression in the context of individual growth, progress of democracy, conceptual respect for a voice of dissent, tolerance for discordant note and acceptance of different voices. Right to say what may displease or annoy others cannot be throttled or garrotted. There can never be any cavil over the fact that the right to freedom of speech and expression is a right that has to get ascendance in a democratic body polity, but at the same time the limit has to be proportionate and not unlimited. It is urged that the defamation has been described as an offence under Section 499 IPC that protects an individual's perception of his own reputation which cannot be elevated to have the status of public interest. The argument is that to give a remedy by taking recourse to criminal

jurisprudence to curb the constitutional right, that is, right to freedom of speech and expression, is neither permissible nor justified. The provision possibly could have met the constitutional requirement had it been associated with law and order or breach of peace but the same is not the position. It is also canvassed that in the colonial era the defamation was conceived of to keep social peace and social order but with the changing climate of growing democracy, it is not permissible to keep alive such a restriction.”

(Emphasis supplied)

From the above proposition of law, it is manifestly clear that the fundamental right to freedom of speech gets ascendance over individual's perception of his own reputation and that the constitutional right cannot be curtailed by taking recourse to criminal jurisprudence. The above decision of the Supreme Court was in the wake of individual's right vis-a-vis right to freedom of speech and expression as enshrined in the Constitution.

From the above definition of “Defamation” it is evident that the words spoken or intended to be read or by signs or by visible representation, makes or publishes any imputation should be the basis on which the act of defamation could be held to be perpetrated. However, in the case on hand, though averment

is made by the respondent in the private complaint filed u/s 199 r/w 200 Cr.P.C., however, no material to substantiate the said act has been filed along with the said complaint, though it is the categorical averment of the respondent in the complaint that the words were spoken by the petitioner when the petitioner was addressing the the print and electronic media. Further, a perusal of the private complaint reveals that though the respondent has alleged that the petitioner has spoken about the party and its President conducting Kangaroo Courts and also trying to usurp the lands of the citizens, yet, no material whatsoever has been placed and it is a two line assertion made by the complainant and the balance of the whole complaint deals only with the acts that are said to have been done by the said political party and its President for the welfare and upliftment of the downtrodden and deprived citizens. The complaint is a mere collection acts of the said to have been done by the political party and its President, but for the few lines of innuendos against the petitioner. The complaint is nothing but an attempt on the part of the respondent to gain political publicity at the cost of judicial time.

WEB COPY

Further, in the present case, sub-section (6) of Section 199 IPC is the fulcrum of the case on which basis the private complaint has been lodged by the respondent, which has been taken cognizance of by the learned Magistrate.

Even a mere reading of the aforesaid provision makes it clear that subject to the exceptions carved out u/s 499 IPC and the ingredients that would make out an offence of defamation u/s 499 IPC, sub-section (6) of Section 199 Cr.P.C. would stand attracted on which cognizance can be taken on a private complaint. However, in the case on hand, the whole complaint falls like a pack of cards, as the crux of sub-section (6) of Section 199 Cr.P.C. comes into operation only when the statement alleged to have been made *affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.* However, in the case, on hand, as averred by the petitioner in the affidavit, the private complaint has been filed by the respondent, as a member of the political party against statements alleged to have been made against the political party and its Party President. However, neither the person nor the party, which is alleged to have been affected by the said statements have given any

authorization to the respondent to file the said private complaint. The respondent, on his own accord, for reasons best known to him, has thought it fit to file the said private complaint and the respondent, being not a person affected by the said alleged statement, invocation of the offence u/s 500 IPC does not merit acceptance.

From the above, it is implicitly clear that the respondent has taken it on his own to file the private complaint on the basis of some statements alleged to have been made by the petitioner against some other person/entity with which he has no grievance as there is no case of defamation as against him and the ingredients prescribed under sub-section (6) to Section 199 Cr.P.C. in no way stands fulfilled. Therefore, the private complaint alleging defamation has no legs to stand and the cognizance taken on the said complaint deserves to be quashed.

Further, it is borne out by record that though the complaint has been filed u/s 199 r/w 200 Cr.P.C., for an offence u/s 500 IPC, yet the court below, on taking cognizance of the case, has issued summons u/s 138 of the Negotiable Instruments Act. This clearly shows that the trial court has not adverted to the material placed before it while taking cognizance of the case and the said act of

the trial court, in issuing a notice u/s 138 of the Negotiable Instruments Act for an offence alleged to have been committed u/s 500 IPC, exhibits clear non-application of mind on the part of the court below and even on the very short ground, the cognizance taken by the trial court transforming itself into C.C. No.212/2017 deserves to be quashed.

For the reasons aforesaid, this Court is of the considered view that C.C. No.212/2017 pending on the file of the learned Judicial Magistrate No.I, Kancheepuram, deserves to be quashed and, accordingly, C.C. No.212/2017 pending on the file of the Judicial Magistrate No.I, Kancheepuram is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

28.09.2021

Index : Yes / No

Internet : Yes / No

GLN

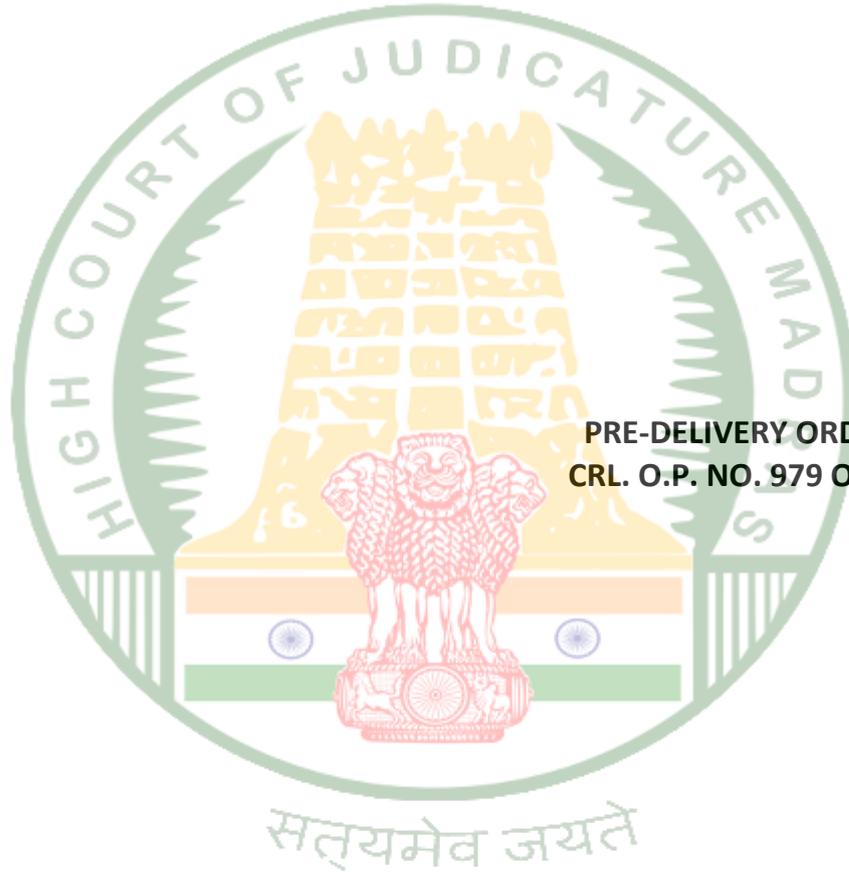
To

The Judicial Magistrate No.I
Kancheepuram.

WEB COPY

M.DHANDAPANI, J.

GLN



**PRE-DELIVERY ORDER IN
CRL. O.P. NO. 979 OF 2018**

**Pronounced on
28.09.2021**
WEB COPY