



Crl.O.P.No.16048 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.08.2024

Pronounced on :12.08.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No16048 of 2023

and

Crl.M.P.No.10074 of 2023

C.Ve.Shanmugam, B.A.B.L.,
Member of Parliament

.. Petitioner/Accused No.1

/versus/

1.State Rep.by Inspector of Police,
Tindivanam Police Station,
Villupuram District.
(Crime No.381/2022)

..1st Respondent/Complainant

2.T.G.Rajasakthi
S/o Thulasi
DMK Volunteer Organiser,
Villupuram District North,
No.141, First Street,
Sanjeevarayanpettai,
Tindivanam.

.. 2nd Respondent/Defacto
Complainant



Crl.O.P.No.16048 of 2023

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Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash the case in Crime No.381 of 2022 on the file of the 1st respondent.

For Petitioner :Mr.R.John Sathyan,Senior Counsel for
Mr.M.Mohamed Riyaz

For R1 :Mr.K.M.D.Muhilan,
Govt.Advocate (Crl.Side)

For R2 :No appearance

ORDER

The petitioner herein is a sitting Member of Parliament and former Minister. He belongs to AIADMK party, who is in opposition as on date.

2. On a complaint given by a Member of DMK party, the case was registered under Sections 153A, 504, 505(1)(b) and 506(1) of IPC on 06.10.2022 for an alleged utterance made by the petitioner among the party men on 27.08.2022 in a hunger strike organised by his party. The



CrI.O.P.No.16048 of 2023

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said complaint in Crime No.381 of 2022 is sought to be quashed on the ground that the petitioner being maliciously victimised for being vociferous against the Ruling Party for its misdeed and misrule. The ingredient of the offence under Sections 153A, 504, 505(1)(b), 506(1) of IPC will not get attract for the speech delivered by the petitioner. The registration of the complaint defeat the fundamental right of freedom of speech and expression guaranteed under the Constitution. Expressing dissent for inaction of the Government, failure to curtail the crimes and violation cannot be construed as insight violation or provoking enmity between different groups. The hunger strike organised to expose inefficiency of the Government will fall under a reasonable criticism, which is permissible in democracy. The Meeting has not caused any hindrance or disturbance to the public peace. The fact that the complaint came to be registered 40 days after the occurrence on consultation of the party members, is sufficient to hold that it is a politically motivated complaint. Further, after the alleged occurrence of insight speech, on 27.08.2022, there was no untoward incident, which could attract the offences under Sections 153-A, 504, 505(1)(b) and 506(1) of IPC.



CrI.O.P.No.16048 of 2023

WEB COPY

3. Relying upon the parameter laid down by the Hon'ble Supreme Court in *Indian Oil Corporation v. NEPC India Ltd. And others* reported in *MANU/SC/3152/2006: 2006(4)CTC 60*, and *State of Haryana v. BhajanLal* reported in *[1992 Supp(1) SCC 335]*, the learned Senior Counsel appearing for the petitioner contended that it is a fit case to be quashed in exercise of power under Section 482 of Cr.P.C.

4. In the written arguments submitted by the learned Senior Counsel appearing for the petitioner, the following judgments are relied:-

(1)Javed Ahmad Hajam v. State of Maharashtra [(2024)4 SCC 156];

(2)Patricia Mukhim v. State of Meghalaya,[(2021)15 SCC35:2021 SCC Online SC 258];

(3)Kaushal Kishor v. State of U.P., [(2023)4 SCC 1]

(4)Shreya Singhal [Shreya Singhal v. Union of India [(2015) 5 SCC 1:(2015)2 SCC(Cri)449];

(5)Mohammad Wajid and Ors. v. State of U.P. And Ors.[(2023)



Crl.O.P.No.16048 of 2023

SCC Online SC 951];

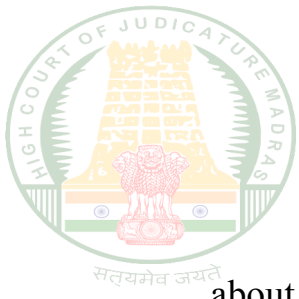
(6)Sharif Ahmed and another v. State of Uttar Pradesh and another [(2024)SCC Online 726]

(7)Chanchalpathi Das v. State of West Bengal [(2023) SCC Online 5C 650]

(8)Maneesha Yadev and others v. State of Uttar Pradesh and another [(2024)SCC Online SC 643] and

(9)Neeharika Infrastructure (p)ltd v. State of Maharashtra [(2021) 19 SCC 401].

5. The learned Government Advocate (Crl.Side) appearing for the State submitted that the petitioner herein, a sitting Member of the Parliament and former Minister had not maintaining decorum and dignity of the office he holds. On 27.08.2022, while participating in the hunger strike organised by his party at Tindivanam near Gandhi Statue for protesting the scheme of converting sea water into drinking water, the petitioner along with one Murugamaran, former MLA and others participated, in which the said Murugamaran abused in filthy language



Crl.O.P.No.16048 of 2023

WEB COPY

about Mr.K.Ponmudi and Mr.Masthan, both were Ministers and Mr.M.K.Stalin, Chief Minister of Tamil Nadu. Following the speech of said Mr.Murugamaran the petitioner in his speech called Chief Minister Mr.M.K.Stalin, as inefficiency person and collected commission of 10% to 20% for the government work, ganja sold in schools and the department of school education turned into the department of sexual abuse. In spite of granting Rs.1602crores, the Chief Minister is not capable of completing the project. Neither Mr.M.K.Stalin, Chief Minister of Tamil Nadu nor his father Mr.M.Karunanidhi, former Chief Minister of Tamil Nadu can touch them. This provocative speech of the petitioner Mr.C.Ve.Shanmugam has insulted and provoked the members of the DMK ruling party and also created illwill between the groups.

6. In support of his argument, the learned Government Advocate (Crl.Side) appearing for the 1st respondent/State would rely upon the judgment of the Hon'ble Supreme Court in *Ramveer Upadhyay and another v. State of U.P. and another reported in [2022 SCC Online SC 484]* in which the Hon'ble Supreme Court has observed as below:-



WEB COPY



CrI.O.P.No.16048 of 2023

“29. In exceptional cases, to prevent abuse of the process of Court, the High Court might in exercise of its inherent powers under Section 482 quash criminal proceedings. However, interference would only be justified when complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive, as held by this Court in Mrs. Dhanalakshmi v. R. Prasanna Kumar³ . 30. The fact that the complaint may have been initiated by reason of political vendetta is not in itself ground for quashing the criminal proceedings, as observed by Bhagwati, CJ in Sheonandan Paswan v. State of Bihar⁴ . It is a well established proposition of law that a criminal prosecution, if otherwise justified and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first informant or complainant. Though the view of Bhagwati, CJ in Sheonandan Paswan (supra) was the minority view, there was no difference of opinion with regard to this finding. To quote Krishna Iyer, J., in State of Punjab v. Gurdial Singh⁵ , “if the use of power is of fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal.”

7. It is the contention of the petitioner that just because the petitioner belongs to the opposition party, the complaint cannot be quashed as political vendetta since the utterance of the petitioner attracts prosecution.



Crl.O.P.No.16048 of 2023

WEB COPY

8. The concerned expressions by the petitioner during speech pointing out lapse of law and order and crime near schools and inside the schools is not exaggerated or invented allegation. Hence, he pleaded that the petition to quash is liable to be dismissed.

9. Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the 1st respondent and perused the records.

10. This complaint filed by a private person, after 40 days of the occurrence, on consultation with the members of the ruling party. The utterance made by the petitioner been roughly translated by the learned Government Advocate (Crl.Side) and the same is extracted in the above paragraph. The offence alleged to have been committed by the petitioner are 153A, 504, 505(1)(b) and 506(1) of IPC. They are the offences relates to uttering words prejudicial to maintaining harmony, intent to provoke breach of peace, statement against State/public tranquillity and



CrI.O.P.No.16048 of 2023

WEB COPY

criminal intimidation. The speech of the petitioner read as a whole does not carry any ingredient to charge him under any of the above offences.

11. The contention of the learned Government Advocate (CrI.Side) that the speech of the petitioner tantamount to promoting enmity between different groups namely, the Ruling Party and the opposition and it is prejudicial to maintaining the harmony does not carry any merit since the very fact that after the meeting held on 27.08.2022 till the complaint filed on 06.10.2022 no evidence to show that the speech of the petitioner disturbed the public tranquillity or there was any hatred or illwill caused between the members of religious, race, language or regional group etc.

12. Apparently, the complaint by T.G.Rajasakthi, a member of DMK party holding the post of DMK Volunteer Wing Organiser, Villupuram District North came to be lodged after consultation with the party members in the meeting held and it is not on the complaint of any affected person by a public servant. A complaint drafted on consultation



CrI.O.P.No.16048 of 2023

WEB COPY

and presented after 40 days after the alleged offences of promoting enmity, causing disturbance to maintaining harmony, insult or intent to provoke the breach of peace or attempt to disturb public tranquillity make no sense when no untoward incident reported because of the alleged speech.

13. The tenor of the speech, the place, in which the speech made will clearly indicate that the petitioner wants to highlight the inefficiency of the Ruling party for not utilising Rs.1602crores allotted to them for the scheme. No doubt, the utterance made are not to the standard of a person, who represent the citizen in the Parliament, but then such utterance may attract other offences under IPC but not Sections 153A, 504, 505(1)(b), 506(1) of IPC, which relates to the public peace, tranquillity and harmony between the community.

14. In *Mohammad Wajid and another v. Stte of U.P and others reported in [(2023) SCC Online SC 951]*, wherein the Hon'ble Supreme Court has observed:-



WEB COPY



CrI.O.P.No.16048 of 2023

“28.....In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.

29. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant.”



Crl.O.P.No.16048 of 2023

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15. In the case in hand, the petitioner herein has participated in the hunger strike and had made certain utterance pointing out the inaction and lapse of the Government in general in which he has uttered certain words which are unparliamentary, though he is a sitting Member of the Parliament. However, if those utterance noway attract the ingredient of the offences under Sections 153A, 504, 505(1)(b) and 506(1) of IPC, the complaint deserves to be quashed.

16. In view of the above reasons, **this Criminal Original Petition is allowed.** Consequently, connected Miscellaneous Petition is closed.

12.08.2024

Index:yes

Neutral Citation:yes/no

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To:

1.The Inspector of Police, Tindivanam Police Station,
Villupuram District.

2.The Public Prosecutor, High Court, Madras.



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CrI.O.P.No.16048 of 2023

DR.G.JAYACHANDRAN,J.

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Pre-delivery Order made in
CrI.O.P.No16048 of 2023
and
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