

CrI.O.P.(MD)No.19872 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**CrI.O.P(MD)No.19872 of 2021
and
CrI.M.P.(MD)No.11183 of 2021**

M.Maridoss

... Petitioner / Sole Accused

Vs

1.State represented by
The Inspector of Police,
CCD-III Police Station,
Madurai City.
(Crime No.21/2021)

... 1st Respondent /
Complainant

2.V.Balakrishnan

... 2nd Respondent /
Defacto complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the impugned FIR in Crime No.21 of 2021 for alleged offences under Sections 124(A), 153(A), 504, 505(1)(b) & 505(2) of IPC on the file of the first respondent police and quash the same.

For Petitioner : Mr.N.Anantha Padmanabhan
for Mr.K.Govindarajan



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For R1 : Mr.Veerakathiravan
Additional Advocate General
assisted by
Mr.T.Senthil Kumar
Additional Public Prosecutor

For R2 : Mr.P.Puhazh Gandhi

ORDER

This Criminal Original Petition was filed for quashing the FIR in Crime No.21 of 2021 registered on the file of the first respondent for the offences under Sections 124(A), 153(A), 504, 505(1)(b) & 505(2) of IPC. The second respondent herein is the defacto complainant.

2.The petitioner herein is a well known political commentator in the social media, running his own 'Youtube' Channel. He is also active on 'Twitter'. The tragic demise of Gen.Bipin Rawat and other army personnel on 08.12.2021 was greeted with glee by some. The petitioner identified them as belonging to 'Dravidar Kazhagam' and 'Dravida Munnetra Kazhagam'. The petitioner in his tweet raised a question as to whether Tamil Nadu under DMK rule was becoming another Kashmir. He expressed his apprehension that if the environment is conducive to breed such anti-national groups, then, there is a

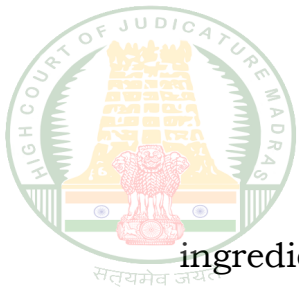


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possibility of any conspiracy of humongous proportions being hatched. He demanded that the secessionist forces should be suppressed.

3.The defacto complainant who is the District Coordinator of the IT Wing of DMK claimed to have come across the said tweet. Thereupon, he lodged a complaint before the first respondent leading to registration of the impugned FIR.

4.The learned counsel for the petitioner contended that the tweet in question was more an agonised response of a true nationalist. He could not bear to see celebrations and overt expressions of joy from some quarters in Tamil Nadu following the tragic event of December 8th. As a regular commentator on current events, he expressed his apprehension that separatism was rearing its ugly head in the State of Tamil Nadu. In any event, he had taken down his tweet within a couple of hours. The petitioner had not instigated any act of violence. The petitioner is entitled to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Since the petitioner has been an acerbic critic of the ruling party, he has been falsely implicated. Since none of the



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ingredients of the offences are present, he called for quashing the impugned FIR.

5.Per contra, the learned Additional Advocate General appearing for the first respondent and the learned counsel appearing for the defacto complainant contended that the petitioner's offending tweet clearly attracts the offences in question. According to them, the petitioner cannot claim protection under Article 19(1)(a) of the Constitution. They would point out that the right to freedom of speech and expression is not an absolute right and that it is very much subject to reasonable restrictions set out under Article 19(2) of the Constitution. In the case on hand, the petitioner had crossed the legal boundaries. The offending tweet causes disaffection and hatred towards a democratically and duly elected popular government. The petitioner had without any basis raised a false alarm as if separatists are thriving in the state. Comparison with Kashmir was not only unwarranted but also positively dangerous. By alleging that the state government is facilitating separatist activity, the petitioner had laid foundation for its eventual dismissal by the Union Government. The petitioner has clearly polarised two groups of people.



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6.The learned Additional Advocate General would further contend that investigation is at a very early stage. The prosecution has filed an application seeking police custody of the petitioner. Only a proper interrogation would unearth further facts. The petitioner had claimed that separatists are in existence and therefore, the State has the right to obtain the materials based on which he made such a claim. The learned Additional Advocate General relied on the decision of the Hon'ble Supreme Court reported in **AIR 2021 SC 1918 (Neeharika Infrastructure Private Limited vs. State of Maharashtra)** to drive home his contention that interference at the FIR stage in a case of this nature is not appropriate. The learned Additional Advocate General and the learned counsel for the defacto complainant placed considerable reliance on the recent decision of the Hon'ble Supreme Court reported in **(2021) 1 SCC 2 (Amish Devgan Vs. Union of India and others)**. The Hon'ble Supreme Court in the said decision had made a clear distinction between hate speech and controversial speech. According to them, the petitioner's tweet would come under the “hate speech” category as the petitioner lacks good faith and bona fides. His remarks cannot be said to constitute fair comment. The



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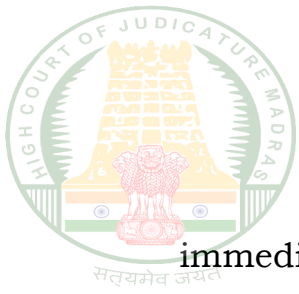
petitioner had a mischievous and malicious intention to provoke his online followers.

7.I carefully considered the rival contentions and went through the materials on record.

8.According to the prosecution, the petitioner's tweet attracts as many as five IPC offences, one of which is Section 504. I perceive it as a low-hanging fruit to be plucked. Section 504 of IPC is as follows:-

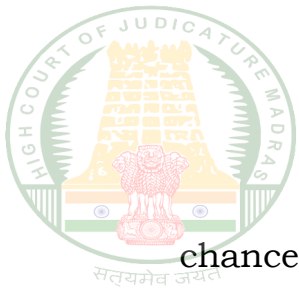
“504.Intentional insult with intent to provoke breach of the peace-Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

This provision came up for consideration in quite a few decisions of the Madras High Court. In ***Muniswami Naicker Vs. P.Kanniappa Naicker (1949) 2 MLJ 767***, it was held that the gravamen of the offence under Section 504 of IPC lies in the utterer provoking the victim by his words to commit an



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immediate breach of the peace. That can only occur if he utters the words in the presence of the victim or has them conveyed to him by letter or messenger. When the accused uttered the abuse in the absence of the complainant, he cannot be convicted under Section 504 of IPC unless he asked his hearers to convey it to the complainant. ***In Vasireddi Sivalinga Prasad Vs. Emperor (1941) MWN (Crl.) 31***, where the accused abused the Zamindarini and her agents in the course of his speech on the inam legislation but neither the zamindarini nor her agents were present at the meeting, the accused cannot be convicted under Section 504 of IPC. ***In S.Gopal Vs. State (1952 MWN (Crl.) 60)***, it was held that the only two points necessary are that the person insulted must be present and such insult must give provocation to the person so insulted then or soon after to commit a breach of peace. Thus, as per the aforesaid decisions, in order to attract the offence of Section 504 IPC, the accused must intentionally communicate an abuse or insult directly to the victim. In this case, the petitioner had sent a tweet which was meant for the consumption of his followers at large. Even according to the defacto complainant, when he was casually surfing the social media, he came across the tweet by sheer



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chance. Section 504 of IPC is intended to cover only one to one interactions and not a case of this nature.

9.Of-course, the learned counsel appearing for the defacto complainant called upon this Court to take note of the march of technology and interpret the provisions of law accordingly. While Constitution is construed as a living tree, a penal code is more like a spider's cobweb. The spider weaves a cobweb and waits for its prey. The range and dimensions of the web are fixed once it is woven. When the law makers frame a penal provision, what is intended is that if the offending act falls within its four corners, then and then alone it will be deemed an offence. Of-course, when it comes to rights, courts go for liberal and expansive interpretations. The approach that is adopted in the case of welfare legislations cannot be adopted in the case of penal provisions. Section 504 of IPC was intended to cover personal and one-to-one insults which may give rise to possible breach of peace. Of-course, it is not necessary that provocation must have a breach of peace. The case on hand is clearly not one such and invocation of Section 504 of IPC is unwarranted.



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10. Section 505 (1)(b) of IPC penalises any person who makes, publishes, or circulates any statement, or rumour, or report, with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity. A reading of the petitioner's tweet only indicates that the petitioner has given a call in favour of national integrity and security. He has taken serious objection to the act committed by certain persons which are undeniably anti-national. The petitioner has called upon the State government to suppress the separatist forces. Section 505(1)(b) of IPC can be invoked only if the act of the person concerned would lead anyone to commit an offence against the State or against the public tranquillity. On the contrary, a holistic reading of the petitioner's tweet clearly indicates that the petitioner wants the State to use its might to ensure that there is public tranquillity. No follower of the petitioner would act against the State when the petitioner is batting for the State. Therefore, Section 505(1)(b) is also not attracted.



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11. Section 505(2) of IPC is as follows:-

(2) Statements creating or promoting enmity, hatred or ill-will between classes —

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Section 153 A is as follows :

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony —

(1) Whoever— (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between



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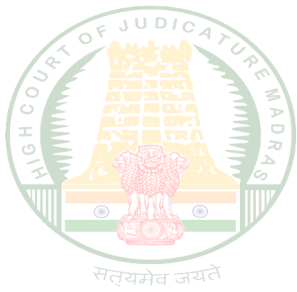


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different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.



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12.In **Manzar Sayeed Khan and Ors. vs. State of Maharashtra and Ors (2007) 5 SCC 1**, the Hon'ble Supreme

Court held as follows :

“16.Section 153A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there



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and connect them by a meticulous process of inferential reasoning.

17. In Ramesh Chotalal Dalal v. Union of India and : [1988]2SCR1011 , this Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of Section 153A of IPC would not apply to it. It was also not prejudicial to the national integration falling under Section 153B of IPC. Approving the observations of Vivian Bose, J. in Bhagvati Charan Shukla v. Provincial Government AIR 1947 Nagpur 1, the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the top of a clapham omnibus.

18. Again in Bilal Ahmed Kaloo v. State of A.P. 1997CriLJ4091, it is held that the common feature in both the Sections, viz., Sections 153A and 505(2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such



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groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two Sections.”

The petitioner's tweet does not involve two groups at all. There is no reference to religion, race, place of birth, residence, language, caste or community. The Hon'ble Supreme Court had clearly held that unless one group is sought to be pitted against the other on the aforementioned grounds, the penal provisions are not at all attracted. It is on this ground, Amish Devgan case relied on by the respondents is distinguishable. The religious element was so obvious in the said case. Even in Amish Devgan, the Hon'ble Supreme Court held that the question of intent would be relevant. The petitioner's intention is that the separatist tendencies must be nipped in the bud. Therefore, the offences under Section 153 A and Section 505(2) of IPC are also not attracted.

13.Finally comes Section 124 A of IPC which penalises sedition. It reads as follows:-

124A.Sedition —Whoever, by words, either spoken or written, or by signs, or by visible



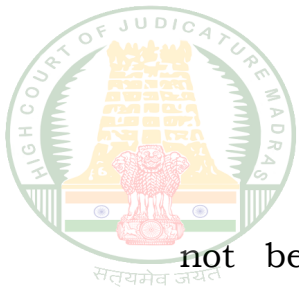
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representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

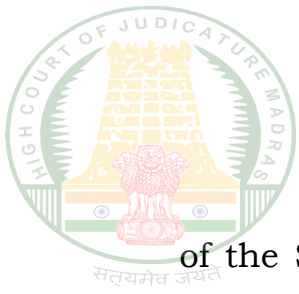
This provision came up for consideration in ***Kedar Nath Singh vs. State of Bihar AIR 1962 SC 955***. The Constitution Bench of the Hon'ble Supreme Court held that that the expression “the Government established by law” has to be distinguished from the persons for the time being engaged in carrying on the administration. “Government established by law” is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the Section. Comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence would



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not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence. Section 124A is limited in its application to acts involving intention or tendency to create disorder, or disturbance of law and order or incitement to violence.

14.The petitioner's tweet was never intended to subvert the Government. On the contrary, it calls for strengthening the foundations of government. Article 51A of the Constitution states that it shall be the duty of every citizen of India to uphold the sovereignty, unity and integrity of India. By no stretch of imagination can the petitioner be said to have harmed the national interests. The petitioner had only drawn the attention of the State government to certain nefarious tendencies brewing in the State. The petitioner wanted the security situation to be overhauled and improved. In the petitioner's perspective, there has been slackness and inaction on the part of those in charge



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of the State government. He has merely vented out his anxiety.

Hence, the tweet of the petitioner cannot be characterized as seditious.

15.A 'Youtuber' or any social media personality regularly commenting on public affairs would also be entitled to the very same rights which are accorded to journalists and the media under Article 19(1)(a) of the Constitution. Much turns on the actual intent behind the act. If as alleged by the prosecution, the petitioner had the intent to cause breach of public peace, he would not have taken down the tweet within a couple of hours. It was only because of the complaint given by the second respondent, the tweet garnered so much attention and publicity.

16.The petitioner is entitled to the constitutionally guaranteed fundamental right to freedom of speech and expression. The first respondent by registering the impugned FIR and arresting the petitioner has infringed upon the said right. Comments were made as to why the court has entertained the petition at such an early stage. When the petitioner has been deprived of his personal liberty, this Court has a



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constitutional duty to discharge as laid down in **Arnab**

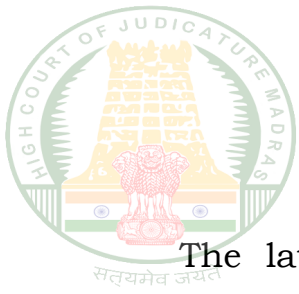
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Manoranjan Goswami v. State of Maharashtra (2021) 2 SCC 427.

17.In **Vinod Dua vs. Union of India (UOI) and Ors.**

AIR 2021 SC 3239, the Hon'ble Supreme Court clarified that every journalist will be entitled to protection in terms of Kedar Nath Singh as every prosecution under Section 124A IPC and 505 IPC must be in strict conformity with the scope and ambit of the said Sections as explained in, and completely in tune with the law laid down therein. After so holding, the Hon'ble Supreme Court quashed the FIR registered against the petitioner by invoking Article 32 of the Constitution of India.

18.Orhan Pamuk who was awarded the 2006 Nobel Prize in literature makes a distinction between the “naive and the sentimental novelist”. The naïve write spontaneously, almost without thinking, not bothering to consider the intellectual or ethical consequences of their words and paying no attention to what others might say. The sentimental writing is deliberate, well thought out and shaped in constant revision and self-criticism.



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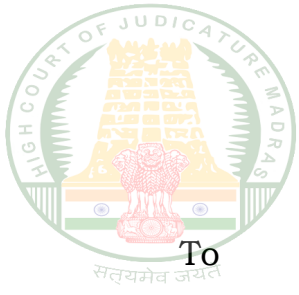
The latter is the product of deep reflection. The petitioner appears to have made a “naive” Tweet in the Pamukian sense. Probably realising it, he took it down. The State can step in only if the petitioner's act falls foul of law and not otherwise.

19. Before concluding, I cannot resist commenting on a comical feature of the impugned complaint. The defacto complainant had stated that as a result of the offending tweet, there will be hatred and enmity between the DMK partymen and the separatists. Maridoss may call it a Freudian slip. I will not be so uncharitable. The defacto complainant must have drafted his complaint in a hurry for reasons best known to him. The very registration of the impugned FIR is illegal. It stands quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Internet:Yes/No
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

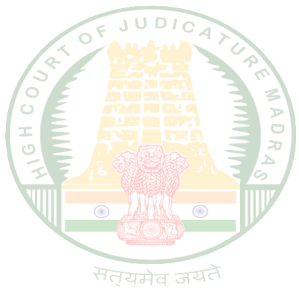


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To

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- 1.The Inspector of Police,
CCD-III Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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