

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.106 of 2022

and

Crl MP(MD)No.78 of 2022

G.Sivarajaboopathi

... Petitioner

Vs.

1.State, rep.by

The Inspector of Police,
Cyber Crime Police Station,
(CCD III, Kanyakumari), Nagercoil.

...1st respondent/
complainant

2.Dharmaraj

...2nd respondent/
defacto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the impugned FIR in Crime No.32 of 2021 dated 15.12.2021 on the file of the first respondent and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor for R1

Mr.M.Karthikeya Venkatachalapathy for R2

ORDER

Following the demise of Gen.Bipin Rawat on 08.12.2021, the petitioner's Face Book page carried the following post :

"பாசிஸ்டுகளின் கைக்கூலி 'சர்வாதிகாரி பிபினுக்காக'
கண்ணீர் சிந்துவது அவமானம்!."

(It is disgrace to shed tears for "Dictator Bipin Rawat", the mercenary of the fascists). It was shared by the co-accused also.

2.The petitioner's act raised the hackles of the defacto complainant who brought it to the notice of the Inspector of Police, Cyber Crime Police Station, Nagercoil. Crime No.32 of 2021 was registered against the petitioner and another for the offences under Sections 153, 505(2) and 504 of IPC on 15.12.2021. The petitioner has filed this Original Petition to quash the same.

3.The person who died was no ordinary person. He was the Chief of Defense Staff (CDS). The circumstances in which he died were extremely tragic. It was nothing short of a national calamity. More than anything else, he was a professional soldier. He was travelling with his wife who also perished. According to the report of the rescuers, the General was alive and that he identified himself and that he died while being taken to hospital. That makes his end all the more heart-wrenching.

4.The conduct of the petitioner would certainly outrage the moral sense of most persons. But the issue on hand must be adjudicated on the basis of an objective criteria. The only question that I should pose to myself is whether the act committed by the petitioner amounts to a cognizable offence. If the answer is in the negative, then the impugned FIR has to be quashed.

5.The petitioner is accused of having committed the offences under Sections 153, 504 & 505(2) of IPC. Section 153 of IPC reads as under :

“153.Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed.—Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

This provision came to be considered in ***Aroon Purie vs. H.L.Varma (1999 Crl.LJ 983)***. The magazine “India Today” had organized a seminar on “Secularism”. Khushwant Singh, the celebrated writer, was one of the speakers. He spoke thus :

"India is secular, Advani says, because of the Hindus, All right, I am willing to concede that if the Muslims had been the same number as the Hindus are they would have declared it an Islamic State. But our pride is that we are a secular State, despite it being over 80 per cent Hindus.

It is Hindus like Gandhi and Nehru who did it and not Hindus like these. They are fanatics, narrow-minded with no vision of the future in this Court. Anyone who is anti-Muslim is there heroes Rana Pratap, Prithviraj Chauhan, Guru Govind Singh, Shivaji, they all fought Muslims. They are the national heroes. Well, there is obviously some distortion in our history. You have the Shivaji-Afzal Khan episode. Quite obviously Shivaji behaved like a bastard, he murdered a man who was embracing him, stories that he plunged a dagger into Shivaji are all made up, we have to move away from all this."

A complaint was filed against the organiser of the event as well as the speaker under Section 153 of IPC. The Hon'ble Bombay High Court noted that in order to attract Section 153, three important ingredients have to be present, namely,

- 1.The act must be illegal.
- 2.Such illegal act must be malignantly done, and
- 3.As a result of such illegal act, there must be a situation which may cause riot.

If the petitioner had uttered the offending words near a military cantonment or a gathering of the armed forces, there would certainly have been a riotous situation. "Who ? What ? and Where?" test which is employed to determine whether the words amount to a hate speech or not can be invoked in the context of Section 153 of IPC also. The petitioner had only posted the text on his Face Book page. They are no doubt defamatory. But then, it is only the aggrieved individual who will have the locus standi to lodge a private complaint. It is not a cognizable offence. Making an uncivil remark directed against a particular individual in the social media in the facts and circumstances of the case would certainly not lead to the situation contemplated by Section 153 of IPC. The fundamental requisite of Section 153 of IPC is absent in this case.

6. 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 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 or 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 posted the offending text in his Face Book page. The contents of one's Face Book page are primarily meant for one's "Face Book friends", though any one can access the same. Even the defacto complainant must have seen it only by chance or some body must have drawn his attention to it. Though the

post was made on 08.12.2021, the complaint was lodged on 15.12.2021. Section 504 of IPC is intended to cover only one to one interactions and not a case of this nature.

7. 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.

The petitioner's post does not involve two groups at all. There is no reference to religion, race, place of birth, residence, language, caste or community. It has been held that unless one group is sought to be pitted against the other on the aforementioned grounds, the penal provision is not attracted.

8.Looked at from any angle, the essential ingredients constituting the offences of Sections 153, 504 and 505(2) of IPC are absent in this case. The impugned FIR is not maintainable. It is quashed. The criminal original petition is allowed.

9.I want the petitioner to read the final Chapter of Mahabharata. All the characters are dead. Yudhishtira is the last to go. When he entered the heaven, he was shocked to see Duryodhana seated happily. Filled with rage, he uttered harsh words. Narada smilingly told him *"It should not be so, Yudhishtira!. While residing in Heaven, all enmities cease. Do not say so about king Duryodhana"*. I do not know the petitioner's ideological background. I guess that he must be allergic to the national epic. I therefore have a quotation for him from Thirukkural.

“பகைஎன்னும் பண்பி லதனை ஒருவன்
நகையேயும் வேண்டற்பாற்று அன்று.” அதிகாரம் 88. குறள் 871.
“The evil of hatred is not of a nature to
be desired by one even in sport.”

While the petitioner is entitled to criticise the legacy of the late General, the way he has reacted to the General's death is not in consonance with Tamil Culture. I have nothing more to say.

21.01.2022

Index : Yes / No
Internet : Yes/ No
skm

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.

To

- 1.The Inspector of Police,
Cyber Crime Police Station, (CCD III, Kanyakumari),
Nagercoil.

- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

G.R.SWAMINATHAN, J.

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