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CrI.O.P.No.26311 of 2023
and
CrI.M.P.Nos.18295 & 18294 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :26.09.2024

Pronounced on :03.10.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.26311 of 2023

and

CrI.M.P.Nos.18295 & 18294 of 2023

V.Kannan @ Kanal Kannan

.. Petitioner/Accused

/versus/

1.State rep.by
Inspector of Police,
Cyber Crime Police Station,
Veperiy, Chennai 600 007.

..Respondent/
Complainant

2.S.Kumaran

.. Respondent/
Defacto complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to cal for the records pertaining to the charge sheet pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.5633 of 2023 filed by the respondent herein and quash the same.



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For Petitioner :Mr.G.Karthikeyan
Senior Counsel for
M/s A.Jagadeeswari

For R1 :Mr.S.Udaya Kumar,
Govt.Advocate (CrI.Side)

ORDER

This petition is filed to quash C.C.No.5633 of 2023 pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, wherein the petitioner facing trial for the alleged offences under Sections 153, 505(1)(b), 505(2) of IPC.

2. The case of the prosecution is that one Kumaran, District Secretary of Thanthai Periyar Dravidar Kazhagam gave a complaint stating that You Tube channel administered by the petitioner herein under the name of “Mai Chennai360” had uploaded his speech with intent to provoke, riot and to cause fear to some Section of the public and to induce others to commit an offence against the public tranquillity. Alleging that his speech in the You Tube Channel had created enmity and



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hatred between classes, he sought for action against the petitioner. The respondent police has registered the complaint in Crime No.78 of 2022 under Sections 153, 505(i)(b) and 505(2) of IPC and taken up for investigation.

3. On perusing the speech of the petitioner circulated through You Tube and recorded the statements of witnesses, Final Report filed before the Additional Chief Metropolitan Magistrate, Egmore, Chennai and the same was taken on file in C.C.No.5633 of 2023.

4. Sum and substance of the objectionable speech as found in the complaint is that, the petitioner had expressed that in front of Sri Rangan Temple, where more than a lakh of devotees visit daily, there is a statute which denigrates believer of God. He also criticised priest of Christian community and members of Islam religion. This according to the complainant warrant action under Sections 153, 505(1)(b) and 505(2) of IPC.



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5. The learned Senior Counsel Mr.G.Karthikeyan, appearing for the petitioner submitted that the complainant Kumaran has no locus to maintain this complaint since the petitioner has not mentioned either the name of E.V.Ramasamy Naicker or Periyar in his speech. His reference to Mohan C.Lauerus, a Christian Priest is only recording his objection to his preaching to convert Hindus. Similarly, reference to 50 Muslim countries, he had said nothing objectionable, but how fast they are able to spread. When the complaint is not from Lauerus or any other person from the Muslim community, the police ought not taken the complaint on file and filed the final report.

6. The learned Senior Counsel appearing for the petitioner also submitted that by installing just opposite to an ancient temple a statute with plaque sayings “one who believes in God is a fool, one who worships in God is a barbarian and one who propagates God is a rascal” is the real provocative act for which the police ought to have taken action against the organisation which has installed the statute for inducing



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hatred among the public. Contrarily, they have registered the complaint against the petitioner, who out of anxious spoken about the hurt and ill-will caused by such act.

7. The learned Government Advocate (Crl.Side) appearing for the first respondent has filed a counter wherein it is stated that the speech of the petitioner affects the faith of other persons from religion. The right conferred under Article 25 of the Indian Constitution of India has been injured by provocative speech of the petitioner. The statue of Thiru. E.V.Ramasamy Naicker @ Periyar is a physical property installed by Thiru. K.Veeramani, Head of Dravidar Kazhaga, in December 2006. The speech of the petitioner to damage the said statue attracts offences under Sections 153, 505(1)(b) and 505(2) of IPC.

8. The submissions of the learned Senior Counsel appearing for the petitioner and the counter filed by the Inspector of Police considered in the light of the You Tube speech of the petitioner. The petitioner herein is a Stunt Master in Tamil Cinema. He is also State Secretary, Art and



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Culture Wing of Hindu Munnani. As per the Arrest Memo, his speech has received 138 likes, 7245 views and 230 comments. Admittedly, after hearing his speech in the You Tube Channel, there had been no disturbance to the public peace or tranquillity; no riot and no promotion of enmity or hatred between classes. Infact, his speech has been gone without any reaction, except the complaint given by one Kumaran, an office bearer of Thanthai Periyar Dravidar Kazhagam. Freedom of speech and expression is a fundamental right. After provoking a person religious sentiments and hurting his belief, by calling him as fool, barbarian and rascal, the complainant cannot take umbrage under the Law and try to gag the petitioner from reacting.

9. From the record, it is clear that the statement found in the plaque of Periyar Statute had provoked the petitioner. The complainant in this case who claims to be the office-bearer of the Thanthai Periyar Dravidar Kazhagam before filing the complaint ought to have realised that the plaque in the Statute will hurt the feeling of believers in God. Since the Statute is in the front of Hindu Temple, the petitioner being the



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officer-bearer of Hindu Munani had expressed his grievance against such insulting phrase. Regarding the speech of Laucerus and Muslim country this Court finds that the petitioner speech does not carry any word or expression which will cause hatred or ill-will among the classes.

10. Sections under which the petitioner is prosecuted are extracted below:-

(i) **Section 153 of IPC:** 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.

(ii) **Section 505(1)(b) of IPC:-** Statements conducting to public mischief:- (1)Whoever makes,



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publishes or circulates any statement, rumour or report:-

(a).....

(b)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;
or

(c).....

(iii) **Section 505 (2) of IPC:** 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 or promote, or which is likely to create or promote, on grounds of religion, race, of residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred a will between different religious, racial, language or regional groups or castes or communities, shall be punishment with imprisonment which may extend to three years, or with fine, or with both.



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11. The alleged speech of the petitioner in You Tube heard as a whole does not attract ingredients to prosecute the petitioner under the above Sections. As pointed out by the learned Senior Counsel appearing for the petitioner when the members of other community or his own community had no objection or reacted to his speech, it is a member of Thanthai Periyar Dravidar Kazhagam has given this complaint. Infact, the display of provocative words commenting believers of God opposite to the Hindu Temple is the cause for the speech and the person, who has provoked the speech cannot take advantage of their provocation and prosecute the petitioner for his reaction.

12. For the above said reason, **this Criminal Original Petition is allowed.** Consequently, connected Miscellaneous Petitions are closed.

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Index:yes
Neutral citation:Yes/no



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To:

- 1.The Additional Chief Metropolitan Magistrate, Egmore, Chennai.
- 2.The Inspector of Police, Cyber Crime Police Station, Vepery, Chennai
600 007.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G. JAYACHANDRAN,J

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delivery Order made in
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