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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.3817 of 2016

and

Crl.MP.Nos.1947 & 1948 of 2016

1. Dr.R.Krishnamurthy

Editor and Printer,  
Dinamalar (RF),  
New Standard Press,  
T.V.R.House, Medavakkam,  
Chennai 600 010

[1<sup>st</sup> petitioner died on 04.03.2021.

This petition is "dismissed as abated"  
in respect of the 1<sup>st</sup> petitioner as per order  
dated 19.04.2021 in Crl OP No.3817 of 2016]

2. Dr.R.Lakshmipathy,

Publisher,  
Dinamalar (RF),  
New Standard Press,  
T.V.R.House, Medavakkam,  
Chennai 600 100

..Petitioners/Accused

.Vs.

The City Public Prosecutor  
City Civil Buildings,  
Chennai.

...Respondent/Complainant

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PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, call for the records in respect of C.C.No.6 of 2016, on the file of the Principal Sessions Judge, Chennai and quash the same as against the petitioners/accused.

For Petitioners : Mr.S.Elambharathi

For Respondent : Mr.E.Raj Thilak,  
Counsel for Government  
(Crl Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings initiated against the petitioners for an offence punishable under Section 500, 501 of IPC.

2. During the last hearing, it was informed before this Court that the 1<sup>st</sup> petitioner died on 04.03.2021 and therefore, this Court has "dismissed the petition as abated" insofar the 1<sup>st</sup> petitioner is concerned vide order dated 19.04.2021.

3. The complaint has been filed through the City

Public Prosecutor under Section 199 (2) of Cr.P.C., r/w the

relevant Government Orders.

4. The learned counsel for the petitioners submitted that even if the allegations made in the complaint are taken as it is, the same does not constitute defamatory allegations with respect to the act or conduct of the then Chief Minister in discharge of her public functions and at the best it can only be treated as a personal defamation. Therefore, the learned counsel submitted that such a complaint cannot be maintained through the City Public Prosecutor and it does not satisfy the requirements under Section 199(2) of Cr.P.C. The learned counsel in order to substantiate his submissions relied upon the judgments of the Hon'ble Supreme Court in ***K.K.Mishra v. The State of Madhya Pradesh & Anr.*** reported in **(2018) 2 LW CrI.17** and ***R.Avudayappan v. Muthukaruppan Public Prosecutor District and Sessions Court, Tirunelveli District*** reported in **(2018) 2 LW CrI 24.**

5. Per contra, the learned counsel for Government (CrI. Side) appearing on behalf of the respondent submitted that

the petitioners have indulged in making wild allegations against the then Hon'ble Chief Minister and thereby have defamed her name in the eyes of the general public. The learned counsel submitted that the petitioners in the name of freedom of press cannot make such defamatory and derogatory allegations against the former Chief Minister and the petitioners will have to necessarily face the trial before the Court below and prove their innocence.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The defamatory statements that were relied upon from the news item published by the magazine has been extracted in the complaint and for proper appreciation, the same is extracted hereunder: "

In the Cover Page as: "பெருமழையை

வெள்ளமாக மாற்றிய தமிழக அரசு"

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சொன்னால், முழை மிகவும் குறைவாகவோ அல்லது இல்லாமலோ இருந்த நவம்பர் மாதத்தின் இறுதி வாரத்தில், ஏரியில் இருக்கும் நீரை வெளியேற்றி நீரின் அளவைக் குறைக்க பொதுப்பணித்துறை அதிகாரிகள் பரிந்துரை செய்தும் கூட எந்த நடவடிக்கையும் எடுக்கப்படவில்லை.

பொதுப்பணித்துறை செயலர், தலைமைச்செயலரின் உத்தரவுக்காக காத்திருக்கிறார் தலைமைச்செயலரோ, முதல்வரின் உத்தரவுக்காக காத்திருக்கிறார்.

இந்த இடத்தில் பொதுப்பணித்துறை அமைச்சர் ஓ.பி.எஸ்., சின் உத்தரவுக்காக, துலைமைச்செயலர் காத்திருக்கிறார் என்றதான், நாம் எழுதியிருக்க வேண்டும்.

ஆனால் இது, ஜெ., வின் ஆட்சி, அவர் ஆட்சியில், ஆணையைத் திறக்க நான் உத்தரவிட்டுள்ளேன் அணையை மூட நான் ஆணை பறப்பித்துள்ளேன் என, எல்லா வேலைகளையும், ஜெ., வே இழுத்துப்போட்டுச் செய்வார் என்பதால், இதில் மட்டும் நாம், ஓ.பி.எஸ்., சை இழுத்துவிடுவது அறம் அல்ல.

அதனால் தலைமைச்செயலர், ஜெ., வின் ஆணைக்காகத் தான் காத்திருக்கிறார் என்பது குழந்தைக்கும் தெளிவு.”

सत्यमेव जयते

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8. Section 199(2) of Cr.P.C., provides a special procedure with regard to the initiation of proceedings for prosecution for defamation of a public servant. However, to maintain such a prosecution, the allegations must directly touch upon acts or conduct of the concerned servant in discharge of his

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or her public function. If the defamatory statement is personal in nature, this special procedure will not apply and it is only the concerned person who has to file the complaint in his or her individual capacity. The law on this issue is well settled and the learned counsel for the petitioners has rightly relied upon the judgments mentioned supra.

9. The allegations based on which the criminal complaint was filed and which has been extracted supra, does not in any way touch upon the conduct of the aggrieved person in discharge of her public function. The allegation even if taken as it is, only can be construed as a personal defamation. Therefore, the complaint that was filed by the City Public Prosecutor cannot be maintained since it does not satisfy the requirements of Section 199(2) of Cr.P.C. It is seen that this complaint is pending from the year 2016 onwards without any progress. No useful purpose will be served by keeping this complaint pending.

10. In the result, this Court has absolutely no hesitation to quash the proceedings in C.C.No.6 of 2016, on the

file of the Principal Sessions Judge, Chennai insofar as the 2<sup>nd</sup> petitioner is concerned and accordingly, the same is quashed. Further, the petitioner's Newspaper are directed to refrain from printing matters in a disrespectful manner. It has been stated 'J', when the said person was the Hon'ble Chief Minister of Tamil Nadu and should have been addressed as Hon'ble Chief Minister J.Jayalalitha and not as 'J'. While printing and publishing matters with regard to the leaders of the Country or State, the petitioners are supposed to give respect and address them accordingly.

Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

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Index : Yes/No  
Internet: Yes/No  
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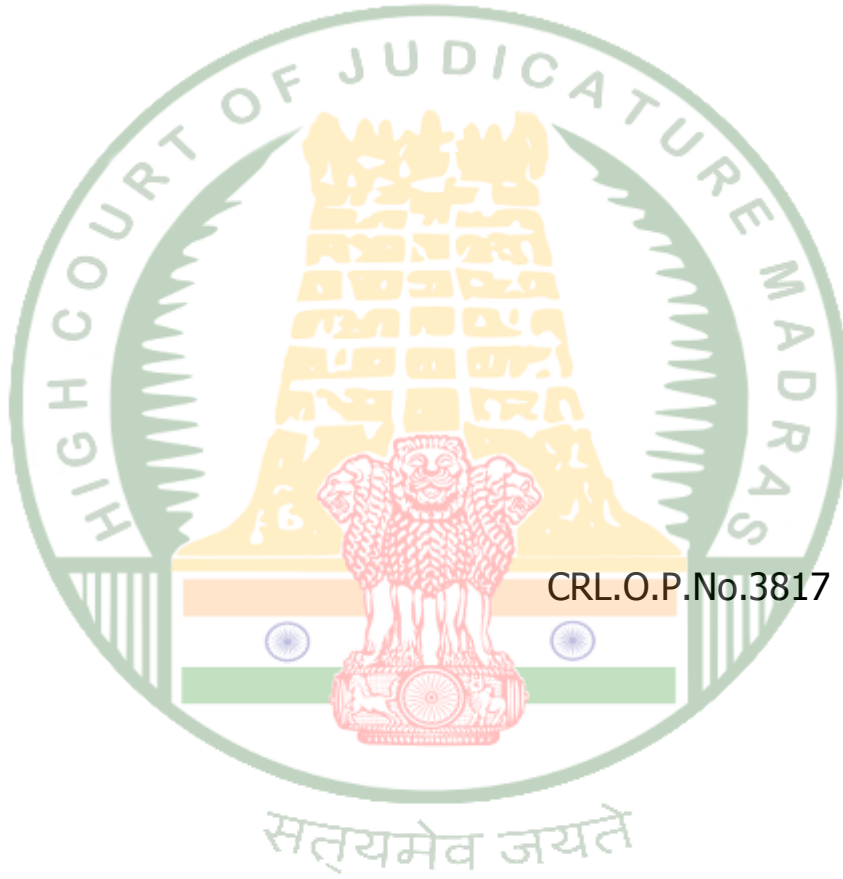
1. The Principal Sessions Judge,  
Chennai.

2.City Public Prosecutor  
High Court Campus,

Chennai.

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