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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	31.03.2021
Date of Order	21.05.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.OP(MD)No.5690 of 2017
and
Crl.MP(MD)No.3978 of 2017

Kamal @ Kamal Haasan
@ Parthasarathy : Petitioner/Sole Accused

Vs.

Aadhinatha Sundaram : Respondent/Complainant

Prayer: Criminal Original Petition is filed under section 482 of the Criminal Procedure Code, to quash the proceedings in C.C No.91 of 2017 on the file of the Judicial Magistrate, Valliyoor.

For Petitioner : Mr.Raguvaran Gopalan

For Respondent : Mr.J.Sankara Pandian
for Mr.S.Palani Velayutham

ORDER

This Criminal Original Petition is filed seeking quashment of the proceedings in C.C No.91 of 2017 on the file of the Judicial Magistrate, Valliyoor.



WWW.LIVELAW.IN

2. The case of prosecution is that the respondent before the trial court is a devout of Hindu and he watched a programme on 12.03.2017 at about 9.00 pm, telecasted by Puthiya Talaimurai TV Channel in his house and it was hosted by one Thiru.Karthikai Selvan and he put a specific question on the increasing violence against women in India, more particularly against women in the Cine Field, for which the accused made a deliberate comment by drawing Hindu Epic Mahabharatha. He stated that nothing is surprising about the increasing violence on the women in a country, which reveres Mahabharatha, which depicts a woman being used as a collateral during gambling. So according to the complainant, this comment made by the accused, insulting Hindu Epic Mahabharatha not only Hindus, but also hurt his religious sentiments. So, the accused has committed the offence punishable under section 298 IPC.

3. The private complaint was taken on file by the trial court and a direction was given to the Inspector of Police to make an enquiry into the allegations made in the complaint, for which, he has also submitted a report. In the report, he has stated that for attracting the offence under section 298 IPC, there must be a intentional act by the accused person. He enquired the anchor



Mr.Karthikai Selvan of the TV Programmer and he stated that there was no intention on the part of the accused to hurt the religious feeling of any one person. The statement was also recorded. So according to the Inspector of Police, Palayoor, Tirunelveli District, the offence under section 298 IPC, is not attracted, since the words spoken by the accused were only general in nature and not specific. Despite that, the trial Court chose to examine the complainant and one witness on this side and took cognizance of the offence under punishable section 298 IPC and issued summons against the petitioner.

4. Heard both sides.

5. The main ground, on which this petition is filed, is that nothing is an offence, which comes under the purview of the provisions specifically conferred upon a citizen under Article 19(1) (a) of the Constitution of India. So, according the learned counsel for the petitioner, the petitioner has the right to freedom of speech and expression. Only a casual reply or conversation took place during the course of TV Program. There was specific question by the Anchor to know his comments about the increasing violence against the women in a country, more particularly against the



women in the cine field. Connecting the insult to the women of today to that one that had been committed in the era of Mahabharatha, he stated so. I find nothing insulting in it to hurt the religious feelings of any one. Day and day out in the public platforms, in homes and indoors, we find a number of comments over the incidents depicted in literature, epics and other works in which, drawing analogy are more common than not. It is a basic right of everyone to make a comment and draw analogies. By that process, only arts, literatures and fine arts are developing. No citizen got any right to stall the thought process of fellow citizen simply because, he thinks it is wrong. A wrong may be right in ones own thought. But, that will not give any right of cause of action to another, to initiate criminal prosecution.

6. The contention on the part of the respondent that twist has been made maliciously by the petitioner, while answering the question cannot be accepted and the answer given by him during TV program may invite mixed response from the public.

7. As pointed out earlier, for attracting offence section 298 IPC, there must be intentional insult. Here, there was no intention while answering a query. If at all, it should be taken only



as causal communication that took place between the Anchor and the petitioner herein.

8. The petitioner had relied upon the judgment in the case of ***Shailabhadra Shan & Others Vs. Swami Krishna Bharati and another [1981 Cri LJ 113]***, wherein it has been held that a written article published in a magazine will not constitute an offence under section 298 IPC. The reason being that the provisions require the offending remarks be made in the presence of person with an intention to wound his religious feelings. Similarly, in ***Acharya Rajneesh Vs. Naval Thakur & Others (1990 Cri LJ 2511)***, it has been observed that that offending words must be used in the presence of the complainant.

9. The next argument is that the comment made by the petitioner was not directly addressed to the respondent. It is a public platform where the opinions are freely expressed. So it was not aimed at any religion, more particularly, the respondent herein.

10. At no stretch of imagination, this court can come to the conclusion that the views expressed by the petitioner was intended to insult or harm the religious feelings of the respondent herein.



WWW.LIVELAW.IN

But the facts and circumstances of the case shows that the petitioner has not exceeded the freedom speech and expression, which was conferred upon him. Moreover, criticism is part and parcel of the free society. So, I am of the considered view that this complaint is clearly an because of abuse of process of court and it is liable to be quashed.

11. As mentioned earlier, criticism is not only the human right, but also democratic right upon which the democracy thrives and society evolves to a new desired polity. Criticism, drawing analogies from the epics or literary works are not uncommon in a free Society. For the reasons stated above, the private complaint filed by the respondent is liable to quashed and accordingly quashed.

12. In the result, this criminal original petition is allowed. The proceedings in C.C.No.91 of 2017 on the file of the Judicial Magistrate, Valliyor, is quashed. 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.

To

The Judicial Magistrate,
Valliyoor.



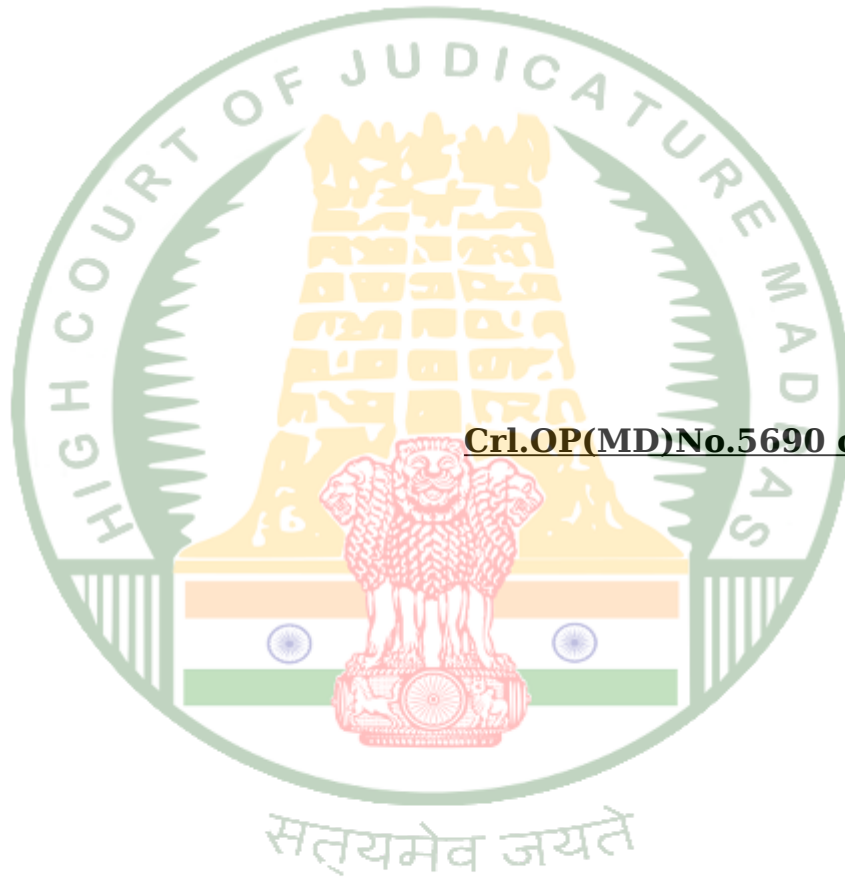
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