

Crl.O.P.No.34166 of 2019

M.DHANDAPANI,J.

The present petition has been filed by the petitioner seeking bail for the alleged offences under Sections 505 (2) and 509 IPC in Cr.No.328 of 2019 on the file of the respondent police, which crime was registered on the complaint given by the defacto complainant.

2.The case of the prosecution is that the petitioner/accused has indulged in uploading certain videos for circulation in social media wherein he has made abusive, defamatory and unsubstantiated statements not only against the defacto complainant one Mrs.Udaya Menon, who is a practising advocate of this Court, but also against a serving Judge of this Court and also against the entire judicial system and has, thereby, committed offences punishable under Sections 502 (2) and 509 of IPC. Based on the complaint given by the defacto complainant, the respondent police has registered a case in Cr.No.328 of 2019 for the above mentioned offences.

3.The learned counsel appearing for the petitioner submitted that the petitioner is engaged in real estate business in which, he was cheated and due to sheer frustration and without visualising the consequences arising out of such an act and without any intention has made those remarks, which, he realised later. It is further

submitted by the learned counsel for the petitioner that those statements were made on mere hearsay and are not based on any documentary evidence. The learned counsel for the petitioner submitted that the said statements are not intentional, but only an outpour of the grievance of the petitioner, and that the petitioner has never intended to hurt anyone. An affidavit of the petitioner submitting unconditional apology has been placed on record by the learned counsel for the petitioner, in which the petitioner/accused, has stated as follows:

"2.நான் எந்தவித ஆதாரமும் இன்றி நீதித்துறை நீதியரசரைபற்றி அவதூறாக YOUTUBE, Facebook போன்ற சமூக வலையதளங்களில் வீடியோவாக பதிவு செய்தேன்.

3. அவ்வாறு அவதூறா வீடியோ பதிவு செய்தது தவறு என்பதால் மான்பிமிசு நீதியரசர் முன்பாக நீபந்தனையற்ற மன்னிப்பு கேட்டு கொள்கிறேன்

4. மேலும் இனிவருங்காலங்களிலும் இது போல் நீதித்துறையை பற்றியே நீதி அரசர்கள் பற்றியோ சமூக வலையதளங்கள் அவதூறா பரப்ப மாட்டேன் என்றும், பதிவிடமாட்டேன் என்றும், ஏற்கனவே பதிவிட்ட அவதூறாக வீடியோ பதிவுகளை நீக்கி விடுகிறேன் என்றும் இதன் மூலம் உறுதி அளிக்கிறேன்."

4.It is to be noted that though it is not the intention of the petitioner, as seen from his statement, however, the statements made

by him are not only contumacious but are also equally unacceptable and is against all canons of law. Majesty of the Court cannot be allowed to be degraded but at the same time, self-realisation also needs to be taken into account while considering the gamut of facts. In view of the apology tendered by the petitioner, this Court is inclined to take the above affidavit on record and, accordingly, accept the apology tendered by the petitioner. The petitioner is warned not to repeat the said act once over.

5.Considering the above facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions :

[a] that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[b] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

6. Coming to the issue on hand, it is submitted by the learned Additional Public Prosecutor that based on the complaint, noted above, notice under Section 91 of Cr.P.C was sent to Facebook, and in response to the said notice, the offensive content is being removed by Facebook. However, Facebook, the social platform on which the content has been uploaded, has however, rejected the request of the respondent to provide user information and IPL logs of the profile from which the said content was uploaded. It is further submitted that nowadays these kind of offences are on the rise and are being committed by the persons, with mala fide intentions and abusive,

derogatory and unsubstantiated statements are being uploaded on social media platforms, not only against individuals, but also against constitutional authorities and persons holding respectable higher posts in many walks of life.

7.Right to a dignified life is guaranteed under the Constitution and the same cannot be allowed to be breached for the pleasure of certain unscrupulous elements, who make defamatory, abusive and unsubstantiated statements against any individuals, be it a common man, a constitutional authority, a Government official or any person holding high office either in the employ of the State/Centre, Public/Private Sector. These types of cheap publicity and scandalous acts should be nipped in the bud, failing which it will start mushrooming and rise to gigantic proportions. Therefore, it is high time that the judicial power has to be wielded in order to curb the social menace and to maintain social decorum and harmony in the society. In such a backdrop, this Court is of the considered view that certain directions need to be issued by this Court to keep such acts in check, but for which dignified human life would be at peril.

8.This Court, had earlier directed for filing of a comprehensive report by the Cyber Crime Branch detailing the steps/action that they intend to take against such of those persons who make such

defamatory/derogatory statements, which touch upon the dignity of the individual as also the office of the individual. In compliance of the said direction, the Director General of Police, CBCID, Tamil Nadu, Chennai has filed a comprehensive report detailing the steps/action that they intend to take against such of those persons who make such defamatory/derogatory statements, which touch upon the dignity of the individual as also the office of the individual. For better clarity, the report is quoted hereunder :-

"21.It is submitted that the Personal Data Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Electronics and Information Technology, on December 11, 2019 and the bill would now be examined by a Joint Select Committee. the Bill defines that all such intermediaries which have users above a notified threshold, and whose actions can impact electoral democracy or public order, have certain obligations, which include providing a voluntary user verification mechanism for users in India. Once the bill is passed by the Parliament the intermediaries can be made liable for User verification.

22. It is submitted that some persons are habitually indulging in posting defamatory contents in Social Media against State, Central Government and Officials in high post. Therefore, it is suggested that necessary amendments may be made to Section 110 of Criminal Procedure Code to direct the person who habitually indulge in posting defamatory contents in social media and under section 108 of CrPC to execute bond for good behavior for a period of one year in order to prevent them from indulging in similar offences. Breach of the bond condition can entitle in imprisonment upto the expiry of the period of the bond.

23. It is further suggested that most of the social media intermediaries have built in mechanism for reporting defamatory or objectionable or abusive posts. This mechanism should be advertised so that all the social media users would be aware of such mechanism and use it whenever necessary."

9.This court perused the above report filed by the respondent,

wherein the mechanism evolved for dealing with such persons, who make derogatory/defamatory statements on social media, has been outlined and the action that is being taken against them have also been detailed. However, neither any proper mechanism relating to the future course of action to be taken against such erring persons, nor the action that is sought to be initiated against such unscrupulous elements have been stated. Unless the menace is curbed with iron hands, it is a creeping issue which is spreading its tentacles far and wide and which will eat away not only the healthy and peaceful living of the individuals, but would also put in jeopardy the whole nation and the persons manning the helm of affairs of the society would be left to the mercy of these individuals. Therefore, it is high time that suitable and necessary directions should be issued to the law enforcing agency to tackle this grave menace by taking necessary penal action against such of those unscrupulous fellows who misuse the social media without any iota of evidence.

10. Accordingly, this Court directs the Director General of Police, the head of the State law enforcing agency to constitute a separate, dedicated and special cell in each Station House, both at the District Level as well as at the State Level forthwith. The officers, who are deputed/posted at such of those centres/special cells be imparted with all crafts and taught the necessary tricks of the trade that are necessary for tracking the unscrupulous offenders, who post such

filthy and derogatory messages/videos in the social media, so that they can quickly and diligently take action against such offenders and prevent untoward incidents from happening so that not only the constitutional authorities and the other high officials, both at the Centre and State can discharge their day-to-day functions in accordance with law without any fear or favour, but also the common man can lead a peaceful life in social harmony and that all the individuals in the society are nurtured with good values and the Nation will stand uplifted in the eyes of the global community.

11.The Director General of Police is directed to adhere to the directions, passed above, by constituting necessary special cells as expeditiously as possible, not later than two months from the date of receipt of a copy of this order and report compliance to this Court. List the matter on 30.03.2020 for reporting compliance of the above order.

29.01.2020

jrs/gln
Internet: Yes/No
Speaking / Non-Speaking

Note: Issue the order copy on 30.01.2020

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M.DHANDAPANI,J.

jrs

Copy To

1. The Secretary to Government,
Home Department,
Fort. St. George,
Chennai.
- 2.The Director General of Police,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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29.01.2020