

Reserved on : 05.12.2024
Pronounced on : 12.12.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.8574 OF 2024

BETWEEN:

SRI SATISH JARKIHOLLI
S/O LAXMAN RAO JARKIHOLLI
AGED ABOUT 62 YEARS
MINISTER OF PUBLIC WORKS
GOVERNMENT OF KARNATAKA
RESIDING AT NO.290/1
HILL GARDEN, ANNA ROAD
GOKAK
GOKAK TALUK
BELAGAVI – 591 307.

... PETITIONER

(BY SRI B.S.SREENIVAS, ADVOCATE FOR
SRI SUNDEEP KUMAR B.U., ADVOCATE)

AND:

SRI. DILIP KUMAR
S/O P.K.K. NAIR
OCCUPATION:ADVOCATE
AGED ABOUT 52 YEARS
RESIDING AT NO.64/1
2ND FLOOR,

LAKSHMI COMMERCIAL COMPLEX
SESHADRIPURAM 1ST MAIN
BENGALURU – 560 020.

... RESPONDENT

(BY SRI DHARMAPAL, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C.,(528 OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023), PRAYING TO QUASH THE PRIVATE COMPLAINT BEARING PCR NO.16934/2022 DATED 09.11.2022 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 153 AND 500 OF IPC 1860 AT ANNEXURE-A ORDER IN CRL.R.P.NO.554/2023 DATED 03.02.2024 PASSED BY THE LXXXI ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82)(SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO FORMER AND ELECTED MPs/MLAs IN THE STATE OF KARNATAKA) ANNEXURE-B THE ORDER TAKING COGNIZANCE DATED 06.08.2024 PASSED BY THE LEARNED XLII ADDL.C.J.M COURT, BENGALURU (SPL.COURT FOR TRIAL OF CASES AGAINST MPs/MLAs, IN THE STATE OF KARNATAKA) AND REGISTRATION OF CASE IN C.C.NO.25423/2024 AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 153 AND 500 OF IPC AT ANNEXURE-C AND ALL FURTHER PROCEEDINGS IN C.C.NO.25423/2024 PENDING ON THE FILE OF THE LEARNED XLII ADDL.C.J.M COURT BENGALURU (SPL.COURT FOR TRIAL OF CASES AGAINST MPs/MLAs, IN THE STATE OF KARNATAKA) AS AGAINST THE PETITIONER.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.12.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question an order dated 06-08-2024 passed by the XLII Additional Chief Judicial Magistrate, Bengaluru in taking cognizance for the offences punishable under Sections 153 and 500 of the IPC against the petitioner and registration of C.C.No.25423 of 2024 thereto.

2. Heard Sri B.S. Sreenivas, learned counsel appearing for the petitioner and Sri Dharmapal, learned counsel appearing for the respondent.

3. Facts, in brief, germane are as follows:-

The respondent who is the complainant registers a private complaint invoking Section 200 of the Cr.P.C., alleging that the petitioner has hurt the sentiments of Hindus as he has made a statement that the word "Hindu" has a dirty meaning. After the said statement the respondent claims to have been hurt deeply, seeks

to register a private complaint for defamation/offence punishable under Sections 499 and 500 of the IPC. Cognizance was not taken by the learned Magistrate before whom the case was presented. Then, the complainant knocks at the doors of the Court of Sessions by filing Criminal Revision Petition No.554 of 2023. The Court of Sessions, by a detailed order, directs taking of cognizance for the said offence against the petitioner. Calling in question these actions, the petitioner is before this Court in the subject petition.

4. The learned counsel appearing for the petitioner would contend that there cannot be an act of defamation against an indeterminate group, as explanation to Section 499 of the IPC is indicative of the fact that it is only against a determinate group or a small group of individuals. Hindu cannot form a determinate group. The learned counsel would submit that the other offence alleged under Section 153 of the IPC also would not get attracted in the case at hand. He would seek quashment of proceedings in its entirety.

5. Per contra, the learned counsel appearing for the respondent would vehemently refute the submissions to contend

that, the petitioner by making the aforesaid statement has hurt the feelings of Hindus and therefore, the complainant being a Hindu, the petitioner has committed defamation. He would also contend that the offence clearly attracts Section 295A of the IPC, though it is not an offence alleged or cognizance taken. He seeks dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The petitioner is a Member of the Karnataka Legislative Assembly. A private complaint comes to be registered on 09-11-2022 invoking Section 200 of the Cr.P.C., contending that the complainant belongs to Nair community, a Hindu by religion and the statement made by the petitioner was seen in news channels and the print media. The statement was, the word Hindu was Persian and its meaning was very dirty. This is the crux of the complaint. According to the complainant the said statement is an offence punishable under Sections 153 and 500 of the IPC. Cognizance was not taken by the

learned Magistrate on the complaint for long time. This led the complainant to knock at the doors of the Court of Sessions by filing a criminal revision petition in CrI.R.P.No.554 of 2023. The Court of Sessions, by a detailed order, directs taking of cognizance and registration of criminal case by the following order:

"The Criminal Revision Petition filed by petitioner/complainant under Section 397 of the Code of Criminal Procedure is hereby allowed.

The impugned order dated 27-03-2023 passed by learned XLII Additional Chief Metropolitan Magistrate, Bengaluru in PCR No.16934 of 2022 with respect to refusing to take cognizance, is hereby set aside and the trial Court shall take cognizance for the offence punishable under Sections 153 and 500 of IPC and shall proceed in accordance with law without being influenced by any of the observations made by this Court in this order.

Office is hereby directed to send back the trial Court records forthwith along with copy of this order."

After the direction of the Court of Sessions, in terms of his order dated 03-02-2024 the learned Magistrate passes an order taking cognizance of the offence. The order reads as follows:

"This is a complaint filed under Section 200 of CrPC against the accused for the offences punishable under Sections 153 and 500 of IPC

2. As per the order of remand and direction by Hon'ble 81st City Civil and Sessions Court, Bengaluru in CrI.R.P.No.554 of 2023 dated 03-02-2024, this matter is taken up for orders regarding cognizance.

3. It is alleged in the complaint that the accused herein had given statements insulting and defaming religious sentiments of Hindu society, which in turn hurt the religious sentiment of the complainant who is also an Hindu by religion. Further alleged statement of the accused had given provocation to Hindus in the society resulting in several agitations and protests at various places of the State. The accused with a malafide intention to provoke Hindus to cause rioting and also to defame Hindus as well as Hindu religion made such imputations, which was published in many newspapers having wide circulation in the State as well as nation. As such the accused had committed the offences P/U/Sections 153 and 500 of IPC.

4. On the basis of complaint averments and also upon hearing the complainant, as there are prima facie materials for taking cognizance of said offences, the complainant was examined under Section 200 of CrPC as CW-1 and three documents were marked as Ex.C1 to 3.

5. On perusal of the complaint and materials available on record i.e., Ex.C1 to 3, prima facie it appears that, all the facts that are referred to by the complainant in his sworn statement and the documents produced by the complainant along with his complaint corroborate the contents/allegations of the complaint filed by the complainant. Therefore, there are prima facie sufficient materials on record to proceed against the accused. Hence, I proceed to pass the following:

ORDER

Cognizance the offences punishable U/Sec. 153 and 500 of IPC is taken as against Accused.

Office to register this case in Register-III as CC and issue summons to Accused returnable by 27-08-2024."

(Emphasis added)

Issuance of summons is what has driven the petitioner to this Court in the subject petition.

8. Whether the statement would become defamatory *qua* the complainant or result in offence under Section 153 of the IPC is required to be noticed. Section 500 of the IPC reads as follows:

"500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

For an offence to become punishable under Section 500 of the IPC, the ingredients as found in Section 499 of the IPC are to be present. Section 499 of IPC reads as follows:

"499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

***Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.**

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) *A* says—"Z is an honest man; he never stole *B*'s watch"; intending to cause it to be believed that Z did steal *B*'s watch. This is defamation, unless it falls within one of the exceptions.

(b) *A* is asked who stole *B*'s watch. *A* points to Z, intending to cause it to be believed that Z stole *B*'s watch. This is defamation, unless it falls within one of the exceptions.

(c) *A* draws a picture of Z running away with *B*'s watch intending it to be believed that Z stole *B*'s watch. This is defamation, unless it falls within one of the exceptions.

First Exception—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

- (a) A person who publishes a book, submits that book to the judgment of the public.
- (b) A person who makes a speech in public, submits that speech to the judgment of the public.
- (c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.
- (d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.
- (e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—

It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations

(a) *A*, a shopkeeper, says to *B*, who manages his business—"Sell nothing to *Z* unless he pays you ready money, for I have no opinion of his honesty." *A* is within the exception, if he has made this imputation on *Z* in good faith for the protection of his own interests.

(b) *A*, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of *Z*. Here, if the imputation is made in good faith, and for the public good, *A* is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

(Emphasis supplied)

Section 499 has several exceptions and also certain explanations. Heavy reliance is placed upon by the learned counsel for the respondent on Exception-II which explains what could amount to defamation. Defamation would be to make an imputation concerning a company or an association or collection of persons as such, as per Explanation-2 to Section 499 of the IPC. In the considered view of the Court this description is of a determinate group and is not a description of indeterminate group. The offence of defamation cannot be laid against an indeterminate group is by now a settled principle of law. Explanation-2 saves the act of

defamation under Section 499 insofar as the case at hand is concerned. The legal position with regard to such defamation has emerged in Courts of England in certain judgments rendered by their law Lords. The celebrated judgment in the case of ***EASTWOOD v. HOLMES - (1858) 1 F & F 347*** wherein the House of Lords was considering a statement in the press quoting as "***all lawyers were thieves***". It was held therein that unless there is something to point to a particular individual, in the opinion of the Court, it would not amount to defamation. This is subsequently followed and affirmed by another judgment of House of Lords in the case of ***KNUPFFER v. LONDON EXPRESS NEWS PAPER LIMITED - 1944 Appeal Cases 116*** wherein the offending passage read as follows:

"he quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an émigré group called Miado Russ or Young Russia. They are a minute body professing a pure Fascist ideology who have long sought a suitable fuehrer - I know with what success... .."

(Emphasis supplied)

On the aforesaid publication, a Russian resident in England brought an action for libel. The trial Court therein had upheld complainant's

plea but Court of Appeal reversed it following the dictum in Eastwood *supra*. Both these judgments are followed by the Apex Court in **G.NARASIMHAN v. T.V. CHOKKAPPA**¹ wherein the Apex Court considered Explanation-2 to Section 499 of the IPC. The Apex Court was considering an imputation published in Hindu Newspaper concerning Dravida Munnetta Kazhakam which was complained of by one of its members. The Apex Court quashed the complaint laying down that a defamatory imputation against collection of persons falls within Explanation-2 to Section 499 of the IPC. When the explanation speaks of a collection of persons it must be definite and determinate body so that the imputation in question can be said to relate to its individual members or components. The relevant paragraph of the judgment of the Apex Court reads as follows:

“15. Prima facie, therefore, if Section 198 of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any defamatory imputation against him individually. **Section 499 of the Penal Code, which defines defamation, lays down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to**

¹(1972) 2 SCC 680

believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing in weighs against mankind in general, or against a particular order of men, e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. [(1969) 3 Salk 224, cited in Ratanlal and Dhirajlal; Law of Crimes (22nd Edn.) 1317] In England also, criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite e.g. men of science, but a definite one, such as, the clergy of the diocese of Durham, the justices of the peace for the county of Middlesex. [see Kenny's Outlines of Criminal Law (19th Edn.) 235]. If a well-defined class is defamed, every particular of that class can file a complaint even if the defamatory imputation in question does not mention him by name.

16. In this connection, counsel for the appellants leaned heavily on Knupffer v. London Express Newspaper Ltd. [(1944) AC 116] The passage printed and published by the respondents and which was the basis of the action there read as follows:

"The quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet

Union are an emigre group called Mlado Russ or Young Russia. They are a minute body professing a pure Fascist ideology who have long sought a suitable Fuehrer — I know with what success."

The appellant, a Russian resident in London, brought the action alleging that the aforesaid words had been falsely and maliciously printed and published of him by the respondents. The evidence was that the Young Russia party had a total membership of 2000, that the headquarters of the party were first in Paris but in 1940 were shifted to America. The evidence, however, showed that the appellant had joined the party in 1928, that in 1935 he acted as the representative of the party and as the head of the branch in England, which had 24 members. The appellant had examined witnesses, all of whom had said that when they read the said article their minds went up to the appellant. The House of Lords rejected the action, Lord Simon saying that it was an essential element of the cause of action in a libel action that the words complained of should be published of the plaintiff, that where he was not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact would not arise if they could not in law be regarded as capable of referring to him, and that that was not so as the imputations were in respect of the party which was in Paris and America. Lord Porter agreed with the dismissal of the action but based his decision on the ground that the body defamed had a membership of 2000, which was considerable, a fact vital in considering whether the words in question referred in fact to the appellant. The principle laid down there was that there can be no civil action for libel if it relates to a class of persons who are too numerous and unascertainable to join as plaintiffs. A single one of them could maintain such an action only if the words complained of were published "of the plaintiff", that is to say, if the words were capable of a conclusion that he was the person referred to. [See Gatley on Libel and Slander (6th Edn.) 288] Mr Anthony, however, was right in submitting that the test whether the members of a class defamed are numerous or not would not be apt in a criminal prosecution where technically speaking it is not by

the persons injured but by the state that criminal proceedings are carried on and a complaint can lie in a case of libel against a class of persons provided always that such a class is not indeterminate or indefinite but a definite one. [Kenny's Outlines of Criminal Law (19th Edn.) p. 235]. It is true that where there is an express statutory provision, as in Section 499, Explanation (2), the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to Section 499 and the law applied in such cases in England. When, therefore, Explanation (2) to Section 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body.

17. This was the construction of Explanation (2) to Section 499 adopted in *Sahib Singh Mehra v. State of U.P.*, [AIR 1965 SC 1451 : (1965) 2 SCR 823, 828 : (1966) 1 SCJ 294] and which guided the decision in that case. The article complained of there was one printed and published in the appellant's newspaper called *Kalivug* of Aligarh which contained the following:

"How the justice stands at a distance as a helpless spectator of the show as to the manner in which the illicit bribe money from plaintiffs and defendants enters into the pockets of public prosecutors and assistant public prosecutors and the extent to which it reaches and to which use it is put."

This Court held that the prosecuting staff of Aligarh and even the prosecuting staff in the State of U.P. formed an identifiable group or "collection of persons" within the meaning of Section 499, Explanation (2) in the sense that one could with certainty say that a group of persons has been defamed as distinguished from the rest of the community, and therefore, a complaint by the public prosecutor and eleven Assistant Public Prosecutors was a competent complaint. Following the test laid down in this decision, the High Court of Allahabad in *Tek Chand v. R.K. Karanjia* [1969 Cri LJ 536] held that the *Rashtriya Swayam Sevak* was a definite and an identifiable body, that defamatory imputations regarding it would be defamation

within the meaning of Section 499, Explanation (2), that such imputations would be defamation of the individual members of that body or class and that a complaint by an individual member of such a body was maintainable. (See also the dictum of Kendall, J., in Wahid Ullah Ansari v. Emperor [AIR 1935 All 743])

18. This being the position in law, the question upon which these appeals must be decided is : which was the class or body in respect of which defamatory words were used and whether that body was a definite and an identifiable body or class so that the imputations in question can be said to relate to its individual components enabling an individual member of it to maintain a complaint?

... ..

20. The news item complained of clearly stated that the resolution was passed by the conference and not by the Dravida Kazhagam. In his very first letter, dated January 28, 1971, which the respondent signed describing himself as the chairman of the reception committee and not as an important member of the Dravida Kazhagam, the respondent complained that the news item had distorted the resolution passed by the conference and asked the editor to publish his "correction and clarification" of that resolution. There is no grievance there that the Dravida Kazhagam suffered injury in reputation or otherwise by that alleged distortion. In his advocate's letter, dated February 1, 1971, the respondent's complaint was that the news item was highly defamatory and had tarnished the image of the conference, of whose reception committee he was the chairman. In his evidence before the Magistrate also he clearly stated that the resolution was the resolution moved by the president of and passed by the conference. Thus, his case throughout was that the publication of the said resolution reported in the said news item in a distorted form had tarnished the image not of the Dravida Kazhagam but of the conference.

21. That being so, the High Court completely missed the real issue viz. whether the conference was a determinate and an identifiable body so that defamatory words used in relation to the resolution

passed by it would be defamation of the individuals who composed it, and the respondent, as one such individual and chairman of its reception committee could maintain a complaint under Section 500 of the Penal Code. Whether the Dravida Kazhagam was an identifiable group or not was beside the point, for, what had to be decided was whether the conference which passed the resolution in question and which was said to have been distorted was such a determinate body, like the Rashtriya Swayam Sevak in Tek Chand case or the body of public prosecutors in Sahib Singh Mehra case as to make defamation with respect to it a cause of complaint by its individual members. In our view the High Court misdirected itself by missing the real and true issue arising in the applications before it and deciding an issue which did not arise from those applications. The judgment of the High Court, based on an extraneous issue, therefore, cannot be sustained.

(Emphasis supplied)

Therefore, this is a case where not a definite class of people is alleged to be defamed but an indefinite class. The very concept of defaming an indefinite class cannot lead to the offence punishable under Section 500 of the IPC, as the purport of Section 499 and the Explanation is that it should be against a definite class of people.

9. The other offence alleged is the one punishable under Section 153 of the IPC. Section 153 of the IPC reads as follows:

"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."

Section 153 mandates that an accused who wantonly gives provoking statement with intent to cause riot, as it is immaterial whether rioting is committed or not committed. The statement of the petitioner nowhere would meet the ingredients of Section 153. The issue is considered by the High Court of Kerala in the case of ***RAJU THOMAS @ JOHN THOMAS v. STATE OF KERALA***², wherein it is held as follows:

"....

2. I heard the learned counsel for the petitioner and also the learned Public Prosecutor. The materials placed by the prosecuting agency do not disclose of any of the essential ingredients constituting the offences, to proceed against the petitioner, and as such the criminal proceedings initiated against him are an abuse of the process of the court, is the submission of his counsel.

3. Annexure A1 is the complaint given by the de facto complainant before the Circle Inspector of Police

² 2012 SCC OnLine Ker. 31773

to proceed against the accused for the alleged criminal acts imputed over the destruction of a notice board. Annexure A6 is a copy of the notice affixed on such board, which was destroyed by the accused. Going through Annexure A6, it is seen that the notice put up naming the accused imputed him as an uncivilized person indulging in antisocial activities. If he does not reform, then, the people of the locality will do what is necessary, is the substance of the notice published. Such a notice published and put up in a board at a public place was torn up and destroyed by the petitioner/accused, is the case of the complainant alleging that thereby he has suffered loss of Rs. 500/-. Even assuming that the allegation raised is true and correct, still, how far the complainant or any other person could have put up a notice board in a public place, the contents of which are per se defamatory against the petitioner is also a larger issue resented on the allegation raised in the complaint. Petitioner has got a case that as against the complainant he had previously launched criminal proceedings which after investigation by the police, has led to his indictment and trial before a court. When such circumstances are canvassed of, which are not refuted, that has also to be taken note of in considering whether the criminal proceedings launched against the petitioner on the complaint over the destruction of the notice board is justified.

4. To constitute an offence under Section 153 of the IPC, the essential ingredients thereof have to be made out. The 'act' imputed against the accused is illegal, he has done such act malignantly or wantonly, and, he has given provocation to any person intending or knowing that such provocation will cause the offence of rioting are the ingredients to establish the offence. To hold that an act is done malignantly, it must be an unlawful act done intentionally without just cause or excuse. "Malignant" means extreme malevolence or enmity; violently hostile or harmful. The act imputed, if not malignantly, should be at least shown to have been done wantonly. "Wantonly" simply means recklessly, thoughtlessly, without regard for right or consequences. More than that the act has been done malignantly or wantonly, it is also

required to be shown that the act of the accused was illegal. A notice containing defamatory statement put up in a board at a public place against the accused was torn of by him. Even if that is accepted on its face value, it cannot be viewed as an unlawful act done by him out of extreme malevolence or enmity or recklessness. Notice board contained defamatory statement against the accused is not disputed. None has a right to exhibit such a notice board in a public place cannot also be lost sight of. Even assuming that the complainant should have approached the law enforcing agency rather than taking action by himself, in the given facts and circumstances presented, it cannot be stated that tearing of the notice board containing defamatory statement against him and that too exhibited in a public place was an act done by him with intend to provoke any person to commit the offence of rioting. Where the exhibiting of such a board against him at a public place itself is shown to be illegal, tearing away that notice board, even if such allegation is accepted as true, cannot be considered as an act intentionally done to provoke any other person to commit rioting. At best, it was an act of removing a notice board affecting his self-respect and dignity when it was exhibited by some miscreants at a public place.”

(Emphasis supplied)

I am in respectful agreement with what has been held by the High Court of Kerala. Therefore, the offence so alleged both *qua* Sections 153 and 500 of the IPC are not met even to their *prima facie* sense in the case at hand. The concerned Sessions Court refers to the judgment in the case of **SUBRAMANIAN SWAMY v. UNION OF INDIA** - (2016)7 SCC 221 to direct the learned

Magistrate to take cognizance of the offence. The said judgment is inapplicable to the facts of the case. There was an aggrieved person in the case therein. But, there is none in the case at hand. Therefore, the mandate under Section 199 of the CrPC which creates a bar for institution of defamation except by an aggrieved person will enure to the benefit of the petitioner, in the resultant, obliteration of the crime.

10. It becomes apposite to refer to the judgment in the case of **MANOJ MAHAVIR PRASAD KHAITAN v. RAM GOPAL PODDAR**³, wherein the Apex Court has held as follows:

"....

12. We reiterate that when the criminal court looks into the complaint, it has to do so with an open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, **the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 CrPC is a guarantee against injustice. The High Court is invested with the tremendous powers thereunder to pass any order in the interests of justice. Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interests of justice. In our opinion, this was a case where the High Court**

³ (2010) 10 SCC 673

ought to have used its powers under Section 482 CrPC."

(Emphasis supplied)

In the light of the afore-narrated facts and the judgments afore-quoted, permitting further proceedings would become an abuse of the process of the law and result in miscarriage of justice.

11. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) The order dated 06-08-2024 passed by the XLII Additional Chief Judicial Magistrate, Bengaluru in PCR No.16934 of 2022 (now C.C.No.25423 of 2024) taking cognizance for the offences under Sections 153 and 500 of the IPC against the petitioner stands quashed.

**Sd/-
(M. NAGAPRASANNA)
JUDGE**

bkp
CT:MJ