*Crl.O.P.(MD)No.1705 of 2022*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	11.12.2024
Delivered on	13.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.1705 of 2022andCrl.M.P. (MD) Nos.1247 and 1248 of 2022

Thirumaran

... Petitioner/Accused

Vs.

1.The Inspector of Police,
S.S.Colony Police Station,
Madurai City.
Cr.No. 433 of 2021.

2. V.Balakrishnan

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned Charge Sheet laid in C.C.No.548 of 2021 on the file of the Judicial Magistrate Court No.V,Madurai and quash the same in so far as the Petitioner herein/A1.

For Petitioners

: Mr.N.Anantha Padmanabhan
Senior Counsel
for Mr.B.Ponnu Pandi



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For Respondents : Mr.S.Ravi
Additional Public Prosecutor
for R1
Mr.V.Raghavachari
Senior Counsel
for Ms.S.Devasena for R2

ORDER

This quash petition has been filed by A1 to quash the proceedings pending in C.C.No.548 of 2021 on the file of the learned Judicial Magistrate No.V, Madurai.

2.The second respondent who is an office bearer of a political party submitted a complaint stating that A1 gave an interview for a YouTube channel run by A2. During that interview, A1 is said to have made scandalous and false statements against the then Tamil Nadu State Finance Minister and his family members with the view to destroy their reputation. That apart, he also made provocative statements against all religions and thereby attempted to create breach of peace and communal harmony among religions. This interview was widely circulated and as a result, it caused disturbance among the party cadres and also the general public and it had the potential of breaking the public peace. Based on this complaint, the FIR came to be registered in Crime



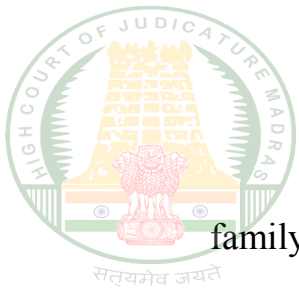
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No.433 of 2021 for offence under Section 504 of IPC as against the petitioner and the person who was running the YouTube channel.

3.On completion of investigation, the police report was filed before the learned Judicial Magistrate No.V, Madurai, for offence under Sections 504 and 505(2) of IPC. The same has been put to challenge by the petitioner (A1).

4.Heard the learned Senior Counsel appearing on behalf of the petitioner, the learned Additional Public Prosecutor appearing on behalf of the first respondent and the learned Senior Counsel appearing on behalf of the second respondent.

5.The learned Senior Counsel appearing on behalf of the petitioner submitted that the defacto complainant is an office bearer of a political party and the complaint itself has been given only with a political motive. He further submitted that even if the entire speech given by the petitioner in the interview is taken as it is, at the best, it can only be construed as imputations made against the finance minister and his



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family members and the same will not constitute an offence under Sections 504 and 505(2) of IPC. If the concerned person is aggrieved, he can only institute proceedings for defamation against the petitioner. Hence, it was contended that the criminal proceedings itself is an abuse of process of law and that no offence has been made out against the petitioner and hence, the proceedings are liable to be quashed by this Court. The learned Senior Counsel in order to substantiate his submissions relied upon the judgments in *Mathew Samuel v. State*, reported in (2019) 1 LW (Crl.) 21 and the judgment of the Apex Court in *Subal Kumar Dey v. State of Tripura*.

6.The learned Additional Public Prosecutor appearing on behalf of the first respondent submitted that the interview given by the petitioner had two parts to it. The first part of the interview touched upon the imputations made against the then finance minister and his family members. However, the second part involved a provocative speech touching upon the religions with an intention to create breach of peace and affect the communal harmony. This interview was also widely circulated and thereby caused disturbance not only for the party cadres



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but also to the general public since the petitioner touched upon religions and which had the propensity to create communal disharmony and breach of peace. Even though the FIR was registered for offence under Section 504 of IPC, on completion of investigation, it was found that an offence under Section 505(2) of IPC was also made out and hence a sanction was obtained from the District Collector through proceedings dated 15.07.2021 under Section 196 of Cr.P.C. and the police report was laid for offence under Sections 504 and 505(2) of IPC. The learned Additional Public Prosecutor further submitted that this petitioner is in the habit of making such provocative statements and creating disturbance to peace and harmony and there are nearly 12 cases pending against the petitioner in this regard. It was therefore submitted that in the name of freedom of speech, such reckless statements cannot be pardoned and that the petitioner has to necessarily undergo trial in this case.

7.The learned Additional Public Prosecutor also relied upon the statements recorded under Section 161(3) of Cr.P.C. from L.W.8 to L.W.10 who have spoken about the effect of the statements made by the petitioner touching upon religion.



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8.The learned Senior Counsel appearing on behalf of the second respondent submitted that insofar as the personal imputations made against the then finance minister and his family members, the same has to be dealt with independently by the concerned aggrieved person. However, the petitioner did not stop with those imputations and he proceeded further to make disparaging remarks touching upon the religions which had the effect of causing breach of peace and disharmony. The speech that was made by the petitioner was recorded and it was freely available in the YouTube and anyone was able to listen to the statements that were made by the petitioner touching upon religions. If this petitioner is repeatedly involved in making such provocative statements, it has to be dealt with in accordance with law and the petitioner has to necessarily face the trial in this case.

9.The learned Senior Counsel in order to substantiate his submission relied upon the orders passed by this Court in Crl.O.P.No. 5859 of 2022 etc., dated 29.08.2023 and Crl.O.P (MD) No.19526 of 2024 dated 14.11.2024.



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

11.This Court also had the advantage of going through the entire transcript of the interview that was given by the petitioner for the private YouTube channel. The major part of the interview pertained to certain serious imputations made against the then finance minister and his family members. Even though these statements are not palatable and are reprehensible, those statements will not constitute an offence under Section 504 and 505(2) of IPC. At the best, those imputations touching upon the reputation of the then finance minister and his family members can only result in initiating defamation proceedings against the petitioner.

12.The interview given by the petitioner did not stop with the imputations made against the then finance minister and his family members. The petitioner proceeded to touch upon religion also. In order to appreciate what exactly was spoken by the petitioner while touching

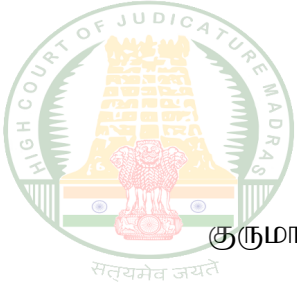


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upon religion, it will be relevant to extract the transcript of the interview

hereunder:

“ஐக்கி வாசுதேவ் என்ன சொல்கிறார், அவனவன் மதத்துகாரன். அவனவன் சொத்தை வைத்துக் கொள்ள வேண்டும். கிறிஸ்துவர் சொத்து கிறிஸ்துவருக்கு, இஸ்லாமியர் சொத்து இஸ்லாமியருக்கு, இந்து சொத்து. அப்போ நாங்க இனிச்சவாய் பயல்களா நாங்கள்? எங்க சொத்தை மூன்று. மூன்று சென்ட் நிலத்தை பட்டா போட்டுக் கொடுக்க வேண்டும் என்று திருமாவளவன் சொல்றாரு, இங்கே இருக்கிற சொத்தை தூக்கிக் கொடுக்க நீங்க யாரு மிஸ்டர்? நீங்க யாரு எங்க சொத்து விஷயத்தில் தலையிட? முதலில் அறநிலையத்துறை வெளியேற வேண்டும் என்று நான் சொல்கிறேன். அறநிலையத் துறைக்கு இந்து மதத்தில் என்ன வேலை அவர்களுக்கு? எங்க காசை எடுத்து ரோடு போடுறீங்க, எங்க காசை எடுத்து எல்லாம் பண்ணீங்க. இன்னைக்கு திருப்பதி தேவஸ்தானம் அப்படி தான் இருக்கா? இன்னைக்கு எங்க பணத்தை எடுப்பதற்கு நீங்க 1 யாரு? எங்க சொத்தை எல்லோருக்கும் கொடுக்க நீங்க யாரு? இன்னைக்கு எங்க சொத்து எங்களிடம் முதலில் இருக்கா? எல்லா திமுககாரன் தான் இந்த சொத்தைப் பூராவும் வைத்து இருக்கான். அதனால் தான் நீங்க எல்லாம் பதறுகிறீர்கள், ஆட்சிக்கு வந்து விட்டால் எல்லோருக்கும் பட்டா போட்டு கொடுக்க நினைத்து இருக்கிறீர்களா? எங்க சொத்து எங்களுக்கு வேண்டும். இந்துக்கள் சொத்து இந்து



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குருமார்களிடம், இந்து தலைவர்களிடம் தான் இருக்க வேண்டும். அதை

யார் எதிர்த்தாலும் இந்த போராட்டம் இன்னும் வலுக்கத் தான் செய்யும்.

விட மாட்டோம்”

13.It is quite apparent from the above transcript that the petitioner is complaining about the manner in which the properties belonging to the Temples and other religious denominations are being dealt with by the 'Hindu Religious and Charitable Endowments Department' (hereinafter referred to as 'HR & CE Department'). He concludes that the properties belonging to the Hindus must only stay with the Hindus and their leaders and the income arising out of those properties should not be used for other purposes. While emphasizing this fact, the petitioner states that the properties belonging to the Muslims are in control of the Muslims. Likewise the properties belonging to the Christians are in control of the Christians. However, only when it comes to the properties of the Hindus, it becomes free for all and the HR & CE Department is having control over the same and that they must move out of taking control of the properties belonging to Hindu Temples.



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14.The language used by the petitioner right through the interview is quite rude, defamatory and it does not augur well for a person who is claiming to be a founder of a political party. Unfortunately, it has now become a fashion for many to take social media platform and speak whatever they think even without realizing the impact it will have on the viewer, general public and on the system as a whole. Instances like this happens very regularly when it touches upon religion and matters relating to religion. Secularism has now been held to be a part of the basic structure of the Constitution. This Country has survived for more than 75 years in spite of being diverse in terms of religion, languages, regional practices, etc. Such unity in diversity is mainly attributable to the fundamental principle that has been adopted by India and which is “Secularism”. Anyone who speaks touching upon religion, must keep in mind that all those speeches are recorded and are freely uploaded and distributed in the social media. Therefore, if a provocative speech is made touching upon the sensitivity of the religious beliefs and faith, it can certainly give rise to breach of peace and communal disharmony. Even if it does not happen immediately, such recorded speeches can be circulated at an appropriate time and it can

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result in a breach of peace at that point of time. The test of instantaneous violence or breach of peace cannot be understood in a traditional way in this Information Technology era. The provocative speech/hate speech can be used at any point of time and therefore, the Apex Court has held that the moment a hate speech is made, even in the absence of a complaint, FIR has to be registered by the police and investigation must be done in view of the fact that the unity of this Country can be affected by such hate speeches and therefore, there must be zero tolerance when such hate speeches are made. The right to freedom of speech and expression guaranteed under the Constitution cannot extend to making provocative and hate speeches. One must not forget that Article 51A also prescribes fundamental duties and it is the duty of every citizen of India to comply with those fundamental duties. One such fundamental duty is to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities.

15. In the case in hand, the speech made by the petitioner broadly touched upon the imputations made against the erstwhile finance



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minister and his family members and also the manner in which the properties belonging to the Hindu Temples are being dealt with by the HR & CE Department. The petitioner is of the opinion that the HR & CE Department is unnecessarily controlling the properties belonging to the Hindu Temples and utilizing the revenue for various other purposes and therefore, those properties must come within the control of Hindus and the leaders belonging to the Hindu community.

16.The issue is as to whether the second portion of the speech will constitute an offence under Sections 504 and 505(2) of IPC. In order to constitute an offence under Section 504 of IPC, this section requires two elements and they are (i) intentionally insulting a person and thereby provoking him and (ii) a person insulting must intend or know it to be likely that such provocation will cause him to break public peace or to commit any other offence.

17.The above section provides a remedy for using abusing and insulting language which may leads to breach of public peace. However, mere hurling of abuses in the absence of any allegation that

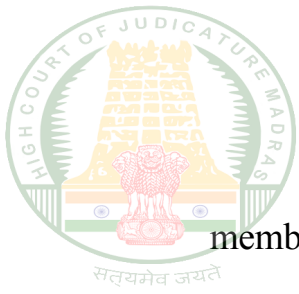


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such abuse was made intending or knowingly that such an action would provoke or break public peace is the *sine qua non* which must be *prima facie* available. Abusing language which may lead to breach of public peace by itself is not an offence and the intention part has a lot of significance.

18.In order to constitute an offence under Section 505(2) of IPC, this section is aimed at reports calculated to produce mutiny or induce one section of the population to commit offences against another. A ventilation of grievance by means of expressing that a particular religion is treated in a particular manner, will not constitute an offence under this provision. There must be incitement of feelings of one group as against the other group and only then this provision will apply. The test that is applied while dealing with Section 153A of IPC is generally applied for this provision also.

19.The speech that was made by the petitioner at the best could have provoked only the party cadres of DMK party since most of the imputations were on the erstwhile finance minister and his family



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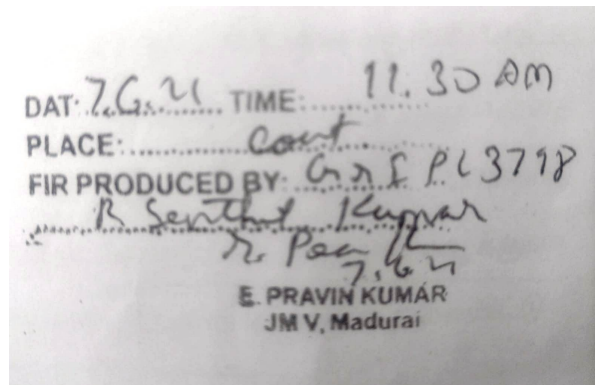
members. Insofar as the second portion of the speech, the same does not in any way demean the other religions and the petitioner only intended to say that the properties belonging to Hindu Temples must be controlled only by the Hindus as is done in the case of properties belonging to the Muslims and Christians. While expressing this opinion, the petitioner has also made strong remarks against the HR & CE Department. Even if this statements are taken as it is, no offence has been made out under Sections 504 and 505(2) of IPC. The scope of Section 505 of IPC was dealt with in detail by this Court in the case of **Mathew Samuel** referred supra. This Court held that such provision was made only to check fissiparous, communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the Nation. The statement made by the petitioner will not certainly promote any feeling of enmity/hatred or ill will between different religious or regional groups. This is in view of the fact that the petitioner has not made any statement affecting the beliefs and sentiments of the other religions. The purport of the statement made by the petitioner was only to treat Hindu religion on par with the other religions.



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20.It is also seen from the records that the Court below has taken rubber stamp cognizance without any application of mind. For proper appreciation, the cognizance taken by the Court below is scanned and extracted hereunder:



21.This Court by relying upon the judgment of the Apex Court has repeatedly held that the process of taking cognizance is a judicial process which requires application of mind. A rubber stamp cognizance is no cognizance in the eye of law since what is being done is to put the seal in the complaint and fill-up the gaps. Such rubber stamp cognizance has been frowned upon by this Court. Useful reference can be made to the judgment of this Court in *Shanmugam and others v. Inspector of Police, Ariyalur Police Station, Ariyalur and others*,



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reported in **(2019) 3 MLJ (Crl.) 339**. The Apex Court also dealt with this issue in ***S.K.Sinha, Chief Enforcement Officer v. Videocon International Ltd & Ors.***, reported in **(2008) 1 SCC (Crl.) 471**.

22.In the light of the above discussion, this Court holds that even if the materials placed before this Court are taken as it is, no offence is made out against the petitioner under Sections 504 and 505(2) of IPC. Hence, the continuation of the proceedings against the petitioner will only result in abuse of process of law which requires the interference of this Court in exercise of its power under Section 482 of Cr.P.C.

23.In the result, the proceedings in C.C.No.548 of 2021 on the file of the learned Judicial Magistrate No.V, Madurai, is hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

13.12.2024

NCC : Yes
Index : Yes
Internet : Yes
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- 1.The Inspector of Police,
S.S.Colony Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

PKN

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