

Mr.Muthuvelaydha Perumal Appavu vs / on 25 October, 2024

Author: G.Jayachandran

Bench: G.Jayachandran

Crl.O.P.No.2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :22.10.2024

Pronounced on :25.10.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25334 of 2024

and

Crl.M.P.Nos.14210 and 14212 of 2024

Mr.Muthuvelaydha Perumal Appavu
@ M.Appavu

.. Petitioner

/versus/

R.M.Babu Murugavel
S/o Mr.D.R.Mannu,
Advocate, Joint Secretary State Legal Wing,
AIADMK, Official Spokesperson,
Party Legal Advisory Committee
Member AIADMK Party,
Having permanent place of residence at
No.B-38, 9th Floor, Tower Block,
Taylors Road, Kilapuk,
Chennai 600 010.

.. Respondent
Complainant

Criminal Original Petition has been filed under Section 133 of CrPc and Section 133 of CrPc
BNSS praying to call for the records in C.C.No.17 of 2024 on the file of
the Court Assistant Sessions Judge, Additional Special Court for Trial

1/22

<https://www.mhc.tn.gov.in/judis>

Crl.O.P.No.25

Cases related to Member of Parliament and Members of Legislative
Assembly of Tamil Nadu, Chennai and quash the same.

For Petitioner :Mr.P.Wilson, Senior Counsel for
M/s P.Wilson Associates

For Respondent :Mr.R.John Sathyan, Senior
Counsel for M/s Nathan & Asso.

ORDER

The petitioner herein is the present Speaker of the Tamilnadu State Assembly. He is also the sitting MLA elected from Radhapuram constituency as a candidate of DMK party. The respondent is former Member of the State Assembly and present Joint Secretary, Legal Wing of AIADMK party. The speech of the petitioner on 21/11/2023 at Chennai in a book release function is the subject matter of the private complaint for the offence under Sections 499 r/w 500 of IPC filed by the respondent. The Special Court at Chennai for cases against MP and MLA had taken cognizance and issued summons to the petitioner. The complaint is impugned in this petition to quash on the following grounds:-

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(a) The complainant has no locus to maintain the complaint for defamation, since the alleged imputation is not against him. Neither his party AIADMK has authorised him to file the complaint on behalf of the party. There is a statutory embargo under Section 199 of Cr.P.C to take cognizance of the offence under Section 499 IPC except upon a complaint made by person aggrieved.

(b) The speech of the petitioner is neither slanderous nor malicious for to be prosecuted under Sections 499 of IPC. Based on video circulated in social media and press news, the complaint is filed.

The complainant has not heard the speech nor examined any person who heard the speech. The qualified speech without any imputation against any individual or the organisation namely AIADMK will not fall within the definition of defamation.

(c) The complaint filed through e-portal of the Court on 15/07/2024 under Section 200 Cr.P.C is not maintainable, after enforcement of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS 2023) with effect from 01.07.2024. As per Section 531 of BNSS 2023, after 01/07/2024, the Code of Criminal Procedure, 1973 is repealed <https://www.mhc.tn.gov.in/judis> and only for pending matters, the old Code will apply and not for fresh petitions/applications.

2. The Learned Senior Counsel for the petitioner relying on the judgements of this court rendered in *Tamilisai Soundararajan –vs- Dhadi K. Karthikeyan* reported in [2021 (3) MWN (CrL.) 159] and *Maridass -vs- S.R.S.Umari Shankar* reported in [MANU/TN/0788/2022] submitted that, the respondent is a person neither affected by the slanderous speech nor authorised to file complaint by the person/organisation aggrieved by the slanderous speech, hence, he cannot maintain a

defamation complaint.

3. Referring the speech of the petitioner, the Learned Senior Counsel submitted that the complainant had cherry picked a part of the speech to mislead. The speech of the petitioner relates to an event happened few years ago when the AIADMK party lost its Leader and struggling with in-fight. At that time, the complainant was not in AIADMK party and he cannot claim any knowledge about, what <https://www.mhc.tn.gov.in/judis> transpired at that point of time within the AIADMK party.

4. Regarding maintainability of the complaint filed under the Old Code of Criminal Procedure, the Learned Senior Counsel relying on the judgments rendered in Deepu –vs- State of UP reported in [MANU/UP.3040/2024] and XXXX –Vs- State of UT Chandigarh and Others reported in [MANU/PH/3009/2024] emphasised that Cr.P.C, 1973 repealed w.e.f. 01/07/2024. Ergo; no new fresh appeal or application or revision or petition can be filed under Cr.P.C on or after 01/07/2024. Only applications pending in Court before 01/07/2024 can be dealt under Cr.P.C,1973.

5. In response to the above submission made on behalf of the petitioner, the learned Senior Counsel appearing for the Respondent/Complainant submitted that, the complainant being the Joint Secretary of the State Legal Wing of AIADMK and member of the Party Legal Advisory Committee, he is competent to maintain the complaint. Further, the complainant, before filing the complaint caused notice to the <https://www.mhc.tn.gov.in/judis> petitioner through his Lawyer on 22/11/2023 calling upon the petitioner to convene a press meet and apologize for the slanderous statement and pay compensation of Rupees Ten lakhs to his party. The petitioner inspite of receiving the notice, not tendered apology.

6. The cause of action for the complaint arose on 21.11.2023 when the petitioner made his scandalous speech in a Book Release Function. On that day, the complainant being the office-bearer of the AIADMK party and vide communication dated 12.08.2021, the complainant is duly authorised to defend the party and party workers from malicious prosecution instituted by the opposite political party (i.e) DMK. Therefore, there cannot be any doubt over the locus standi of the complainant to institute the complaint on behalf of the party for the malicious imputation made by the petitioner which is per se defamatory and made with intention to create an illusory opinion among the public that 40 MLAs of the party were willing to defect AIADMK and joint DMK.

<https://www.mhc.tn.gov.in/judis>

7. To buttress his submission, the learned Senior Counsel appearing for the respondent rely on the judgment of the Hon'ble Supreme Court rendered in G.Narasimhan v. T.V.Chokkappa reported in [(1972) 2 SCC 680] and contend that, the explanation (2) to Section 499 of IPC talks about collection of persons being defamed and any member of the Association can be a complainant if the collection of persons is a definite and determinate body. Hence, AIADMK being a definite and determinate body, the respondent, a member and office-bearer can maintain the complaint.

8. The learned Senior Counsel appearing for the respondent/complainant relying upon the judgment of the High Court rendered in John Thomas v. Dr.K.Jagadeesan reported in [AIR 2001 SC 2651], submitted that the collocation of the words “by some persons aggrieved” need not necessarily be the defamed person himself. The test should be whether the complainant has reason to feel hurt on account of the publication. In this case, the imputation made by the petitioner in his speech had necessarily caused hurt to the complainant and his party man <https://www.mhc.tn.gov.in/judis> which is meant for its discipline and devotion to the party. Referring para 11 of his complaint in which the alleged imputation is extracted, the learned Senior Counsel appearing for the respondent submitted that when not even a last level member of the party willing to slight towards DMK, the derogative remarks of the petitioner exhibits the ill-will of the petitioner against AIADMK party.

9. He further submitted that the plea that the complaint filed under old Code is not maintainable, is a preposterous argument placed by the petitioner. According to the respondent counsel, after causing notice to the petitioner calling upon him to tender apology, the complaint was filed through on-line on 31.01.2024 before the II Metropolitan Magistrate, Egmore, Chennai in e-filing No.7957 of 2024 and the same was returned for the reason that the petitioner being the sitting Member of the Legislative Assembly, the complaint should be filed before the designated Court. When the complaint was submitted before the Special Court for Exclusive trial of MPs and MLAs cases, it was returned with instruction that the petition must be filed before the Principal Sessions <https://www.mhc.tn.gov.in/judis> Court and the Principal Sessions Court will transfer the case, if it is to be tried by the Special Court.

10. In the said circumstances, the petitioner approached the High Court in CrI.O.P.No.10769 of 2024 for direction to the Principal Sessions Court to receive the complaint. On the direction of the High Court, vide order dated 19.06.2024, the learned Principal Sessions Judge, took the complaint on file and transferred the matter to the Special Court designated constituted exclusively to try the case against MPs and MLAs. Therefore, both on law and on facts the complaint under old Code is maintainable.

11. Whether the complaint under old Cr.P.C is maintainable:

In respect of the plea that the defamation complaint filed on 15.07.2024 under Old Code is not maintainable, it is to be noted that the alleged offensive speech was on 21.11.2023 and the complaint is for offence under Section 499 of IPC. The savings and repeal Section 358 of Bharatiya Nyaya Sanhita, 2023 (in short “BNS, 2023”) reads as under:-

<https://www.mhc.tn.gov.in/judis> Repeal and savings.

(1) The Indian Penal Code (45 of 1860) is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,—

- (a) the previous operation of the Code so repealed or anything duly done or
 - (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or
 - (c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or
 - (d) any investigation or remedy in respect of any such penalty, or punishment; or
 - (e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.
- (3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.
- (4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of the repeal.” <https://www.mhc.tn.gov.in/judis>

12. Section 6 of General Clauses Act, 1897 deals about the effect of “repeal” and it reads as under:-

“Section 6 of the Act deals with repeal. Its main object is to reverse the common law rule that a repeal obliterates the statute for all purposes for the future. Though this section is one of the most important sections in the code, and contains a provision of frequent application a study of the decided cases up-to- date shows that the problems that have arisen as to repeal are (i) either outside the section,¹ or (ii) concern the application of the provisions of the section, or (iii) concern the effect of a separate repeal clause in a particular Central Act. These problems cannot be avoided or minimised by, an amendment of section 6, because their solution does not lie in any general rule.”

13. Thus, in both the statutes viz., BNS and General Clause Act, 1897, it is made explicitly clear that the right, privilege, obligation or liability acquired, accrued or incurred under the Code (IPC) shall not be affected in view of the repeal.

<https://www.mhc.tn.gov.in/judis>

14. The interpretations of the Courts in respect of Section 484 of Cr.P.C., 1973 viz-a-viz IPC, 1860 cannot mutatis mutandis apply to Section 531 of BNSS, since when Criminal Procedure Code, 1973 put into force, Indian Penal Code, 1860 was intact. Whereas when Cr.P.C., 1973 repealed and

replaced by BNSS, 2023, correspondingly IPC was also repealed and replaced by BNS, 2023 with repeal and saving provision.

15. Sub Section (3) of Section 358 in BNS, 2023, provides a deeming fiction to the effect, in respect of action taken under IPC shall be deemed to have done or taken under the corresponding provision of BNS. However, for the procedure to be followed while dealing offences committed prior to 01.07.2024, is the Code of Criminal Procedure, 1973 alone to apply, in view of Section 4 and Section 531(2)(a) of BNSS 2023.

4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws:- (1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions <https://www.mhc.tn.gov.in/judis> hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 531(2)(a) of BNSS, 2023 reads as under:-

“531.Repeal and savings:- (1)The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal-

(a)if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

16. The word “pending” employed in Section 531(2)(a) of BNSS, 2023, cannot be given a restricted meaning ignoring Section 4 of the BNSS, 2023 and Section 358 of BNS. If such restricted meaning is <https://www.mhc.tn.gov.in/judis> given, it will be prejudicial to the litigants, whenever limitation is prescribed in one Act and not prescribed in another Act or different limitation is prescribed or if there is change in the procedure itself.

17. For example under the BNSS, 2023 in a private complaint under Section 223, offence can be taken cognizance by the Magistrate only after giving the accused an opportunity to be heard. Similarly, under BNSS, 2023, the accused has to file discharge petition within 60 days from the date of receipt of the copies relied by the prosecution or from the date of committal as the case may be. Whereas no such limitation is prescribed under the repealed Cr.P.C., 1973. If saving provided under Section 531(2)(a) of BNSS, 2023, is restricted only to matters pending on or before 01.07.2024, then

a FIR or complaint regarding an occurrence prior to 01.07.2024, but registered after 01.07.2024 to be proceeded following the procedure under BNSS, 2023. This will be contrary to the saving of rights and privileges, acquired ensured protection under Section 358 of BNS, 2023 and Section 4 of General Clause Act.

<https://www.mhc.tn.gov.in/judis>

18. Further, the procedure is hand maid of justice. The right of a person to seek remedy cannot be denied, if the complainant is able to satisfy the Court that his complaint discloses commission of offence and he is competent to maintain the complaint being a person affected.

19. Locus to maintain the complaint:-

The complainant R.M.Babu Murugavel, is a Member of the AIADMK party and also the Joint Secretary of its Legal wing. The following speech of the petitioner/accused is taken as a defamatory against the AIADMK party:-

11..... "following the demise of late Dr.J.Jayalithaa(Amaa), the former Chief Minister of Tamil Nadu and the then General Secretary of AIADMK party, 40 MLA's from AIADMK political party were willing to join the present ruling party and in this regard one of the prominent politician from AIADMK political party had contacted him in order to facilitate the said purpose".

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20. The complainant as member of the AIADMK party and as its office-bearer and as one of the members of the legal advisor team constituted by the party leadership claims that the above speech of the petitioner Mr.Appavu is derogatory and without any material evidence. According to him, the petitioner by his above speech had mocked AIADMK party and its members credibility and loyalty. The speech which has gone viral in the public domain, had tampered the goodwill of the complainant and its party. The imputation made by Mr.Appavu with intent to defame the complainant party (i.e.)AIADMK.

21. The speech of Mr.Appavu as reported in Indian Express (copy relied by the complainant) reads as below:-

"Speaking at a function here on Monday, Appavu said after the death of Jayalalithaa, the AIADMK split into many factions and 18 MLAs complained about the EPS government to the governor. "On the day TTV Dhinakaran went to Tihar jail, a friend of mine called me and said 40 AIADMK MLAs are ready to shift their loyalty since they don't know where to go.

<https://www.mhc.tn.gov.in/judis> (Emphasis added) Immediately I thought the DMK was out of power for 10 years and using this (if DMK formed the government) we

could give local body posts to two crore persons if we conduct local body elections, and one lakh people could be given posts in cooperative departments. So, the DMK should utilize this opportunity and I conveyed this to Stalin.

Two days later, Stalin said only with popular mandate, the DMK will come to power and not otherwise. He took such a principled stand," Appavu said. However, stoutly denying this, AIADMK organising secretary D Jayakumar, at party headquarters here, said, "There is not even an iota of truth in the statement made by Appavu. He just speaks like this in the expectation of becoming a minister. I request Stalin to make Appavu a minister."

22. The speech of Mr.Appavu and the instant reaction of Mr.D.Jayakumar, Organising Secretary of AIADMK party is very clear. The statement is denied as not true, but not been taken as an offensive or defamatory imputation to demean AIADMK party or its members. It is to be noted that Mr.D.Jayakumar was MLA and Minister on the day, when <https://www.mhc.tn.gov.in/judis> one of AIADMK party MLA and the Deputy Secretary Mr.T.T.V.Dinakaran went to Tihar jail on 26.04.2017. On that day the petitioner R.M.Babu Murugavel was not even a member of AIADMK party.

23. In the light of the factual background narrated above, it is necessary the interpretation of the Court regarding the expression "some person aggrieved" employed in Section 199 (2) Cr.P.C has to be examined.

24. Subramanian Swamy v. Union of India reported in [(2016)7 SCC 221], the Hon'ble Supreme Court at paragraph No.197 and 198 has held as under:-

"198. The said provision is criticised on the ground that "some person aggrieved" is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of "some person aggrieved" is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this Court has determined the concept of "some person aggrieved". While dealing with various Explanations, it has <https://www.mhc.tn.gov.in/judis> been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the "person aggrieved" is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In John Thomas v. K. Jagadeesan [John Thomas v. K. Jagadeesan, (2001) 6 SCC 30 : 2001 SCC (Cri) 974] while dealing with "person aggrieved", the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts of each case. In S. Khushboo [S. Khushboo v. Kanniammal, (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299] , while dealing with "person aggrieved", a three-

Judge Bench has opined that the respondents therein were not "person aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the

complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance on M.S. Jayaraj v. Commr. of Excise [M.S. Jayaraj v. Commr. of Excise, (2000) 7 SCC 552] and G. Narasimhan [G. Narasimhan v. T.V. Chokkappa, (1972) 2 SCC 680 : 1972 SCC (Cri) 777] and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an “aggrieved person”, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words “some person aggrieved” are determined by the courts depending upon the facts of the <https://www.mhc.tn.gov.in/judis> case. Therefore, the submission that it can include any and everyone as a “person aggrieved” is too specious a submission to be accepted.

199. It has also been commented upon that by giving a benefit to public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of public functions to file the case through the Public Prosecutor, apart from saving his right under sub-section (6) of Section 199 CrPC, the provision becomes discriminatory. In this regard, it is urged that a public servant is treated differently than the other persons and the classification invites the frown of Article 14 of the Constitution and there is no base for such classification. Thus, the attack is on the base of Article 14 of the Constitution.”

25. Thus, it is clear that 'some person aggrieved' but must be the person aggrieved in any manner. In the instant case, the alleged imputation of Mr.Appavu directed against 40 MLAs of AIADMK party during the year 2017, will not cover the complainant even remotely. If he claims that he carries the sword for his newly embraced party, he must have expressed authorisation to represent his party. Whereas, the complaint is in his personal capacity and not in the representative <https://www.mhc.tn.gov.in/judis> capacity.

26. In the result, this Criminal Original Petition is allowed. The complaint of the respondent stands quashed for want of locus standi. Consequently, connected Miscellaneous Petitions are closed.

25.10.2024 Index:yes Internet:yes/no Speaking order/non speaking order Neutral citation:yes/no
ari To:

The Assistant Sessions Judge, Additional Special Court for Trial of Cases related to
Member of Parliament and Members of Legislative Assembly of Tamil Nadu,
Chennai.

<https://www.mhc.tn.gov.in/judis> Dr.G.JAYACHANDRAN,J.

ari delivery Order made in and Crl.M.P.Nos.14210 and 14212 of 2024 25.10.2024
<https://www.mhc.tn.gov.in/judis>