

K.G.Uthayakumar vs The State on 7 January, 2015

Author: N.Kirubakaran

Bench: N.Kirubakaran

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 7.1.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Crl.O.P(MD)No.10752 of 2014

K.G.Uthayakumar

... Petitioner

Vs

1.The State, rep. by
The Superintendent of Police,
Kanyakumari District.

2.The Inspector of Police,
Kaliyakavilai Police Station,
Kanyakumari District.

... Respondents

Prayer

Petition under Section 482 of the Code of Criminal Procedure, to direct the respondent to direct the second respondent police to register a First Information Report based on the petitioner's complaint dated 14.03.2014 given to the second respondent and take appropriate action.

!For Petitioner : Mr.V.Kathirvelu
Senior Counsel for Mr.J.Shabu Jose

For Respondent : Mr.P.Kandasamy
Govt.Advocate(Crl.Side)

For Intervenor : Mr.Veerakathiravan

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: ORDER

ECHO OF HATE POLITICS is heard in this case. Hate politics is like an octopus which has many tentacles like defamatory speeches, malicious writings, filing vexatious cases against the opposite parties and the leaders, political murders, physical attacks etc. It is disheartening to note that hate politics is prevalent throughout India and Tamil Nadu is not an exception. Some of the political parties who are supposed to work for the common man are responsible for this adversarial atmosphere.

2. The petitioner, who claims to be AIADMK Secretary and Election In- charge for Vilavankodu Constituency contends that on 14.03.2014 at about 04.15 p.m one M.K.Stalin and others belonging to DMK party, who came to Kanyakumari District for parliament election campaign, stayed in Public Works Department building at Kuzhithurai and violated the Election Commission Code; The Election Officer was immediately informed about the violation by a complaint dated 14.03.2014 to the second respondent and another complaint to the first respondent on 15.03.2014 to take action against the said persons. So far no action has been taken. Hence, the petitioner has come before this Court seeking direction to register FIR against the proposed accused.

3. Mr.V.Kathirvelu, learned senior counsel appearing for the petitioner, would contend that the proposed accused in violation of Model Code of Conduct of Elections stayed at Public Works Department's building, during elections campaign. He referred to Model Code of conduct in this regard. The proposed accused committed offence under Section 171 of IPC. This is an election offence. Under Section 154 Cr.P.C, anybody can give complaint to the police station, District Collector and the Revenue Divisional Officer in this regard. A judgement in Dhinubhai Boghabhai Solanki vs. State of Gujarat and others reported in 2014 (4) SCC 626 was relied upon by the learned Senior counsel for the petitioner opposing the hearing of the proposed accused. Therefore, he seeks for a direction to the second respondent to register the complaint against the proposed accused.

4. On the other hand, Mr.Veera Kathiravan, learned counsel appearing for the intervenor would contend that no offence is made out to register the complaint; Section 188 of IPC can be invoked only by the lawful authority, namely, Election Commission, through procedure under Section 195 of the Cr.P.C. and not by an individual; Though the District Collector sought for particulars from the petitioner regarding his complaint, he failed to produce the same; The police cannot enquire into the election disputes or election offences under Sections 125 to 138 of the Representation of the People's Act, 1950, which defines electoral offence and this case does not come under any of the offences; Disobedience of election code cannot become an offence; Therefore, Section 482 of Cr.P.C cannot be invoked by the petitioner, the counsel submitted. He would rely upon a judgement in P.D.Lakhani and another vs. State of Punjab dated 22.4.2008 passed by the Hon'ble Supreme Court to contend that when a complaint was not made by an appropriate Public Servant, the Court will have no jurisdiction in respect thereof and when Section contemplates that complaint must be in writing by the public servant concerned, there is no compliance of law.

5. Mr.K.Chellapandian, learned Additional Advocate General would submit that the complaint given to the police was forwarded to the Superintendent of Police, who in turn sent the same to the District Collector and he directed the Revenue Divisional Officer, to conduct an enquiry. The enquiry was conducted on 24.07.2014.

Heard the parties and perused the records.

6. According to the petitioner, the proposed accused/intervenor in violation of the Model Code of Conduct, stayed in Public Works Department, Kuzhithurai at 04.15 p.m on 14.03.2013. A perusal of the records filed by the petitioner, especially, the representation given by the petitioner to the second respondent on 14.03.2013, would reveal that the proposed accused during his election campaign, stayed in the Public Works Department building for about twenty minutes and then left. According to the petitioner, the said act is in violation of Model Code of Conduct.

7. Clause VII (iii) of the Election Code referred to by the learned Senior Counsel for the petitioner, reads as follows:-

?(iii) Rest houses, dark bungalows or other Government accommodation shall not be monopolized by the party in power or its candidates and such accommodation shall be allowed to be used by other parties and candidates in a fair manner but no party or candidate shall use or be allowed to use such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda?.

A perusal of the above would reveal that no party or candidate shall be allowed to use the rest house as campaign office and if it is used as campaign office by members of political parties inside the premises, the same shall be deemed to be violation of Model Code of Conduct. However in this case, it is alleged by the petitioner by complaint dated 14.3.2014 and 15.3.2014 that the proposed accused, used the Public Works Department Bungalow only for twenty minutes to take rest. The relevant portion of the complaint dated 14.03.2014 reads as follows:

? gpurhuj;Jf;F tUif je;j jp/K/f/bghUshsh; K/f/!;lhypd; tpjpKiwfis kPwp ,d;W khiy Rkhh; 4/15 kzp mstpy; bghJg; gzp Jiwf;F brhe;jkhd FHpj;Jiw Ma;t[khspifapy; j';fp jp/K/f/ bjhz;lh;fSld; ,isg;ghwp bfhzouE;jhu;@.

8. It seems only on 9.4.2014, as an after thought, another complaint was given with more allegations, which were neither stated either in the complaint dated 14.3.2014 or 15.3.2014. It would be anybody's guess as to what a person could do in 20 minutes time. Without even knowing as to what could have been done, during short stay, the complainant has initiated the proceedings. It is not the case of the petitioner that during 20 minutes stay, the proposed accused met the party workers or held a meeting. When such is the position, the complaint of the petitioner about violation of Model Code of Conduct by the proposed accused is misconceived. This kind of complaint is a consequence of hate politics.

9. The offence alleged is violation of Model Code of Conduct. If at all any IPC offences is made out, it is only under Sections 171-A to 171-I, which speak about ?offences relating to elections?. They are:

171-A. ?Candidate?. ?Electoral right? defined. 171-B. Bribery 171-C. Undue influence at elections 171-D. Personation at elections.

171-E. Punishment for bribery 171-F. Punishment for undue influence or personation at an election 171-G. False statement in connection with an election. 171-H. Illegal payments in connection with an election. 171-I. Failure to keep election accounts.

The alleged violation would not come under any of the offences mentioned above. Assuming that there is a violation, it is only under Section 188 of I.P.C. which speaks about ?Disobedience to order duly promulgated by Public Servant. ? Which reads as follows:

?188. Disobedience to order duly promulgated by public servant -- Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgated such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or Itends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one thousand rupees, or with both.

Explanation. -- It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, hark.? Even the aforesaid Section can be pressed into operation only by the lawful authority, namely, the Election Commissioner, under Section 195 of the Cr.P.C. through private complaint procedure. Section 195 of Cr.P.C. is extracted as follows:

Section 195 (1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of Sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court, and upon its receipt by the Court, no further proceedings shall be taken on the complaint;

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purpose of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: ?

10. As rightly pointed out by the learned counsel for the intervenor, the electoral offences have been categorized under Sections 125 to 138 of Chapter III of the Representation of the People's Act 1950 and the case on hand does not make out any of the electoral offences as mentioned below:

"125.Promoting enmity between classes in connection with election.

125A. Penalty for filing false affidavit, etc.

126.Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll. 126A.Restriction on publication and dissemination of result of exit polls, etc. 126B, Offences by companies.

127.Disturbances at election meetings.

127A Restrictions on the printing of pamphlets, posters, etc. 128 Maintenance of secrecy of voting.

129. Officers, etc., at elections not to act for candidates or to influence voting.

130. Prohibition of canvassing in or near polling stations.

131.Penalty for disorderly conduct in or near polling stations.

132. Penalty for misconduct at the polling station. 132A Penalty for failure to observe procedure for voting.

133.Penalty for illegal hiring or procuring of conveyances at elections.

134 Breaches of official duty in connection with elections.

134.A Penalty for Government servants for acting as election agent, polling agent or counting agent.

134B Prohibition of going armed to or near a polling station."

The alleged violation of Model Code of Conduct does not come under any of the offences as stated above and the facts narrated by the petitioner cannot become an offence as already observed.

11. The Hon'ble Supreme Court in P.D.Lakhani and another vs. State of Punjab, in Appeal (Crl.) 693 of 2008 dated 22.4.2008 held that Section 195 IPC directs filing of appropriate complaint, petition, only by Public Servant concerned. In Daulat Ram vs. State of Punjab reported in (1962) 2 SCR 812, and in State of U.P. v. Mata Bhikh and others reported in (1994) 4 SCC 95 held similar dictum referred to above. Hence, the petitioner is not entitled to file complaint against the proposed accused other than the Election Officer. It is not like any other IPC offence, which can be informed to the police through complaint, as per Section 154 of Cr.P.C. When the offence is specifically covered by the Special Act, namely, the Representation of the People's Act, 1950, the procedure contemplated therein alone has to be followed. Therefore, the petitioner cannot insist the police to register the complaint against the proposed accused.

12. It is true, as argued by the petitioner, that the proposed accused cannot claim any right of audience as held by Hon'ble Supreme Court in Dirubhai Boghabhai Solanki vs. State of Gujarat and others reported in 2014 4 SCC 626 Union of India vs. W.N.Chadha reported in 1993 Suppl 4 SCC

260, in Central Bureau of Investigation and another vs. Rajesh Gandhi and another reported in 1996 SCC 253, in Sri Bhagvan Gamardha Sreepada Vallabha Venkatakrishwarandha, Maharaja vs. State of Andra Pradesh reported in 1999 5 SCC 740 and in Narendarjigoel vs. State of Maharastra and another reported in 2009 6 SCC 65. However, there is no prohibition for this Court to hear the intervenor, when he himself appears before this Court without notice and it is the discretion of this Court to hear the intervenor, if necessary.

13. The learned Additional Advocate General submitted that the complaint given to the police was forwarded to the Superintendent of Police, then to the District Collector and then to Revenue Divisional Officer, who conducted an enquiry. However, the petitioner did not appear in the enquiry conducted by the Revenue Divisional Officer for the reasons best known to him. When there was a failure on the part of the petitioner, he cannot complain that his complaint was not acted upon. His failure to appear for enquiry would only show that he is not interested in prosecuting the alleged case. Instead of following up the matter before revenue authorities, the petitioner has indulged in this publicity litigation.

14. It is seen that the Revenue Divisional Officer through communication dated 24.07.2014 informed the Superintendent of Police and also the District Collector that he conducted enquiry on 23.07.2014. Except the petitioner herein, all others participated. It has been stated in R.D.O's report dated 24.07.2014 that the proposed accused visited the Travels Bungalow without getting permission. The relevant portion of the said RDO report reads as follows:

? During enquiry on 23.07.2014, except the petitioner Thiru K.G.Udayakumar and Thiru.N.Sureshraj, Kanniyakumari District Secretary, D.M.K., the remaining officials turned up for enquiry and statements recorded. During enquiry Thiru.Kannan, Masthur, P.W.D Guest House, Kuzhithurai have stated that, while Thiru.M.K.Stalin entered the guest house premises, he was working at the backyard and that on hearing the sound of the vehicle, he reached the front side of the guest house and by this time Thiru.M.K.Stalin was already standing on the front corridor and that Thiru.M.K.Stalin might have used the rest room and that he had not actually seen him entering the room.

Further I submit that on perusal of available records and enquiries, it is found that:-

. Maintenance work was being undertaken in the IB and hence the front gate was kept open for this purpose. . Thiru.M.K.Stalin who comes under 'Z' scale security has entered the premises of the IB, Kuzhithurai on the said date-time.

. No permission has been obtained by Thiru M.K.Stalin from the concerned authority regarding the visit to the IB.

. The register maintained in the IB does not disclose any registration of visit made by Thiru. M.K.Stalin in the IB. Therefore based on my preliminary enquiry, I found that, Thiru.M.K.Stalin had visited the P.W.D. IB premises without getting any prior

permission from the relevant authorities, which is going against the principle of Model Code of Conduct.?

15. A political leader, who was on the election campaign, for attending nature's call or taking rest would have entered I.B that too, for twenty minutes. The said act cannot be termed as a violation. For the reasons best known to the petitioner, he alleges that the said act is a violation of the Model Code of Conduct constituting an election offence. As already found, it is neither a violation of Code nor an election offence under the Special Act or under IPC. Therefore, the petition deserves to be dismissed and accordingly dismissed.

16. This Case only demonstrates as to how politics is played. The petitioner's attempt is to gain publicity and recognition. He wants to find fault with opposition leader some how and invented allegation of violation. The action of the petitioner in filing this case is nothing but manifestation of ?HATE POLITICS?. Since the present proceedings is the result of hate politics, this Court is constrained to incidentally consider the said issue. The political parties can be opposing parties and they cannot be inimical parties. Such animosity is being cultivated, totally losing sight that they represent people's cause. If a ruling party loses the elections, the outgoing Chief Minister neither participates in the official swearing in function of the new Government nor participates in the newly constituted assembly and discharges the democratic duty, even though he or she is elected as a member of legislative Assembly. It is very unfortunate that the leaders neither exchange pleasantries nor participate together in any function including official functions. The cadres are taking cue from the conduct of their leaders also exhibit similar adversarial reaction.

17. The Days of Rajaji-Periyar, Kamarajar-Anna, healthy politics had gone by and adversarial atmosphere has come into existence right from 70's in Tamilnadu. It is very common in the meetings of political parties, broad attacks are being made personally abusing opposition party leaders using intemperate, disrespectful and inappropriate language in derogatory manner which an ordinary man cannot even imagine. The sad part of it is that the attacks are being made in the presence of top leaders who also seem to enjoy the offensive remarks/allegations made against opposition leaders. Whether one likes it or not, it is a true state of affairs.

18. It is a stark reality that obscene, personal,defamatory humiliating, disgusting remarks/allegations are being thrown against the leaders, their people and friends throwing the democratic values, decency to wind. Even for small trivial, in local bodies, exchange of vulgar statements/remarks and blows among councillors are very common nowadays. The healthy politics of yester years has become a history now, replaced by inimical, violent and unhealthy political practices and they only fight to catch power by hook or crook . In the process, the victims are ?Democracy?, ?Nation?and ?Poor Citizens?.

19. Even a common man, mostly, may either be a party worker/cadre or sympathiser of one political party or other, apart from die hard cadres. When such is the position, any wrong guidance by the political parties would lead to unrest in the society. Majority parties are nowadays governed by ?Dynasty?. Family members and kith and kin of the top leaders alone are made leaders who themselves fight with each other within the same party. Hence it is clear hate politics is not only

inter party but also intra party phenomenon. It is evident rivalry is exhibited by various groups within political parties. One such incident is group clashes among the cadres during election of a political party held in December, 2014.

20. For proper functioning of democracy, the role of top leaders is very essential and their good guidance should lead to healthy and decent politics. Parliamentary form of democracy like ours depends upon the political parties which get elected to Parliament or legislatures by the people through elections. Therefore, their actions and speeches should be above board and should be hall marks of democracy. The leaders of all political parties have to exhibit restraint, decorum, decency etc. in criticising other parties and leaders and their speeches and actions should be model for others including the cadres. Otherwise, this kind of petition cannot be avoided.

21. One should not forget the fact that many cadres are die hard cadres. Unless, the leaders themselves decide to condemn the cadres for hate politics and encourage them to practice healthy politics, the present ugly trend cannot be put an end. The cadres should be taught about values of democracy and not to indulge in filing frivolous cases like the case on hand. Then only the onslaught on the democracy atleast could be contained, if not prevented.

22. This role of election Commission does not end with conducting of election and it should continue to have vigil on the actions and functioning of the political parties in the country even after elections. Any instance of hate speech and action due to hate politics should be enquired appropriate action should be taken against the party or atleast directions should be given to the concerned party to suspend the guilty cadre from the party for a definite period. This kind of action will go long way to prevent unhealthy political action.

23. This petition is nothing but a facet of hate politics. No doubt, it is for the opposite camp to watch the other camp during election time for violation of Model Code of Conduct. However, it does not mean that the stay of a leader for 20 minutes in I.B. for rest can be termed as a violation, unless there was a public meeting or the I.B. was used as election office. The petitioner should have verified the purpose of stay and thereafter should have given the complaints. This Court is of the opinion that this petition has been filed only to claim publicity and to seek attention and recognition from the top leaders. This kind of trend, nowadays, is common in all parties and that is the reason why the cadres and lower level leaders of the political parties are indulging in this kind of gimmicks to be noted by leadership. Some times, such acts also get rewards and naturally, the cadres and lower level leaders are tempted to follow such mean methods, which are not good for healthy politics. Hence this Court expects top leaders of political parties to shun hate politics and disapprove and condemn hate speeches, actions by not recognising them to uphold democratic principles. Then only political culture would be healthy in consonance with democratic values.

24. However, it is heartening to note that when a derogatory article about the then Chief Minister of Tamil Nadu was posted on Sri Lankan Government's Defence Ministry Website in July 2014, all the political leaders unanimously condemned the action of the said Sri Lankan Government leading to withdrawal of the article and tendering apology by Srilankan Government to the Hon'ble Prime Minister of India and the then Chief Minister. This Court hopes that this trend continues forever,

and in that event there will not be any occasion for this kind of case.

7 1.2015 skn Index: Yes Internet: Yes To

- 1.The Superintendent of Police, Kanyakumari District.
- 2.The Inspector of Police, Kaliyakavilai Police Station, Kanyakumari District.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- 4.Election Commission of India, New Delhi.

N.KIRUBAKARAN, J skn Order made in 7.1.2015