

ITEM NO.11

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Criminal) No(s). 193/2015

A. VIJAYAKANTH

Petitioner(s)

VERSUS

PUBLIC PROSECUTOR, DHARMAPURI DISTRICT AND ORS.

Respondent(s)

(With appln.(s) for exemption from filing O.T. And ex-parte stay and office report)

Date : 15/07/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. G.S. Mani, Adv.
Mr. A. Arockiaraj, Adv.
Mr. M.M. Kashyap, AOR

For Respondent(s) Mr. Ranjit Kumar, SG
Mr. K. Vekkata Ramani, Sr. Adv.
Mr. M. Yogesh Kanna, AOR
Ms. Nithya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. G.S. Mani, learned counsel for the petitioner, Mr. Venkkata Ramani, learned Additional Advocate General for the State of Tamil Nadue and Mr. Ranjit Kumar, learned Solicitor General for the Union of India.

It is submitted by Mr. Mani, learned counsel appearing for the petitioner that though the constitutional validity of Sections 499 and 500 of the Indian Penal Code (IPC) and Section 199 of the Code of Criminal Procedure (CrPC) has been upheld in the case of Subramanian Swamy vs. Union of India, Ministry of Law & Ors. (2016 (5) scale 379), yet the present case, apart from the constitutional validity, also harps on the concept of fair criticism, discernment

and dissection of activities of the State Government and disapproval of views taken in the matters of administration and policy decisions. Mr. Mani, learned counsel would emphatically submit that the petition also raises a question whether the authority who is entitled to launch a prosecution under Sections 499 and 500 IPC through the Public Prosecutor should do it against a person solely because he is critical or has a different opinion.

Learned counsel would further submit that the office of the Public Prosecutor has its own independence; and the Public Prosecutor has been conferred an independent role under the provisions of the CrPC and he cannot become a post office in the hands of the authorities to file prosecutions for criminal defamation without scrutinizing whether a case is made out or not. It is urged by him that a sustained democracy is predicated fundamentally on the idea of criticism, dissent, and tolerance, for the will, desire, aspirations and sometimes the desperation of the people on many an occasion are expressed through such criticism. Mr. Mani would submit that the citizenry right to criticize cannot be atrophied by constant launching of criminal prosecution for defamation on each and every issue to silence the critics because when criticism in a vibrant democracy in this manner is crippled, the democracy which is best defined as the "Government of the People, by the People, for the People" would lose its cherished values.

Mr. Ranjit Kumar, learned Solicitor General, in his turn, would submit that apart from the Public Prosecutor who has a definitive role under Section 199(2) of the CrPC, the sanctioning authority also has a significant and sacred role under sub-section (4) of the said provision and, therefore, a complaint cannot be filed in a routine manner to harass a citizen.

Issue notice.

As Mr. Ranjit Kumar, learned Solicitor General has entered appearance on behalf of Respondent No.2 and Mr. M.M. Kashyap,

learned counsel assisting Mr. Venkkata Ramani, learned senior counsel has entered appearance for respondent No.4, no further notice need be issued.

As far as respondent Nos.1 and 3 are concerned, let notice be issued fixing a returnable within four weeks.

The interim order of stay passed on 20.11.2015 shall remain in force until further orders.

Let the matter be listed on 24.8.2016.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master