IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2020

DELIVERED ON : 21.05.2020

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

W.P.Nos.5129, 31552, 5130, 27764, 27765, 31553, 23679, 32392, 32393, 33291, 23681, 25377, 32394, 25378, 33218, 33290, 4860, 4861, 23680, 25296, 25297 of 2012 and 11624, 11625, 11626, 11627, 11628, 11727, 11728 of 2013
and
Connected Miscellaneous Petitions

In W.P.No.5129 of 2012
Thiru N.Ram,
Editor-in-Chief, Printer & Publisher
"The Hindu"
Kasturi & Sons Limited,
Plot B-6 & B-7, CMDA industrial Complex,
Maraimalal Nagar,
Chengleput Taluk,
Kancheepuram District,
Pin: 603209 ... Petitioner

Versus

1.Union of India,
Represented by its Secretary to Government,
Ministry of Law and Company Affairs,
Shastri Bhawan,
New Delhi – 110 001.

2.State of Tamil Nadu,

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Represented by its Secretary to Government,
Public Department, Fort St. George,
Chennai – 600 009.

3.The City Public Prosecutor,
City Civil Court Buildings,
Chennai -600 104. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari calling for the records pertaining to the G.O.Ms.No.38 Public (Law and Order – H) Department dated 13th January 2012 issued by the 2nd respondent and to quash the same as the same is an abuse of the process of law and is unconstitutional and illegal as it affects the petitioner's right to freedom of speech and expression and that of the press and media.

For Petitioner ... Mr.P.S.Raman, Senior Counsel
for Mr.M.S.Murali

For Respondent 1 ... Mr.J.Madana Gopal Rao,
Central Government Standing Counsel

For Respondents 2 & 3 ... Mr.S.R.Rajagopalan, AAG,
Assisted by Mr.K.Ravi Kumar,
Additional Government Pleader

सत्यमेव जयते

COMMON ORDER

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These batch of writ petitions raises the following questions for consideration:

a) What is meant by Criminal defamation against the State ? What

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is the statutory criteria required for launching prosecution for criminal defamation under Section 199(2) Cr.P.C through a Public Prosecutor? Whether the same have been satisfied in the cases that have come up for consideration before this court?

b) Under what circumstances, a Public Prosecutor can launch prosecution for defaming a public servant/constitutional functionary in respect of his conduct in the discharge of his/her public functions under Section 199(2) Cr.P.C.?

c) What are the mandatory pre-requisites to be satisfied by the State before sanctioning prosecution for Criminal defamation through a Public Prosecutor under Section 199(4) Cr.P.C.?

d) What is the Role played by a Public Prosecutor and his duties in a prosecution launched by him under Section 199(2) Cr.P.C.?

e) When can a Sessions Judge take cognizance of a complaint filed by a Public Prosecutor under Section 499 IPC read with Section 199(2) Cr.P.C.?

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f) What are the essential facts that are required to be pleaded in a complaint filed by the Public Prosecutor under Section 499 IPC read with section 199(2) Cr.P.C. to satisfy the statutory requirements under

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Section 199(3) Cr.P.C.?

g) Whether the accord of sanction to prosecute under Section 199(4) Cr.P.C can be tested in a writ petition ?

h) Whether the respective articles published which are the subject matter of consideration in these batch of writ petitions are in respect of the conduct of the public servant/constitutional functionary in the discharge of his/her public functions ?

i) What is the extent of freedom of press in India under Article 19(1) of the Constitution of India in the light of the decisions rendered by the Hon'ble Supreme Court of India ?

2. In these batch of writ petitions, several newspapers have challenged the launching of prosecution of Criminal defamation against them under Section 499 IPC by the State Government through the Public Prosecutor under Section 199(2) Cr.P.C. In the respective cases, either the Government order sanctioning the prosecution is challenged or the criminal complaint pending before the Sessions Judge is challenged or in some cases, both the Government order and the criminal complaint are challenged. Some of the petitioners have also challenged the

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constitutional validity of criminal defamation falling under chapter XXI IPC (which comprises of Sections 499 to 502 IPC). But that issue has now been well settled by the Hon'ble Supreme Court in the case of ***Subramaniam Swamy vs. Union of India*** reported in ***(2016) 7 SCC 221*** as the Supreme Court has held the said section to be constitutionally valid. Therefore, there is no necessity for this Court to give its ruling on the constitutionality of criminal defamation.

3. This Court now restricts its consideration only to the validity of Government orders sanctioning prosecution through the Public Prosecutor and the consequent complaints pending on the file of the Sessions Court. As the issues involved in these writ petitions are one and the same, they are disposed of by a common order.

4. The details of the writ petitions giving particulars of the alleged defamatory articles, the names of the Public Servant/Constitutional Functionary who is alleged to have been defamed, the date of the publications, the details of the Government Order sanctioning prosecution and the complaint details are furnished below:

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Name of the Newspaper : The Hindu

W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
5129 of 2012	N.Ram Editor in Chief	The office of the Tamil bi-weekly Nakkheeran was attacked by AIADMK activists on Satuday after it carried a report describing Chief Minister Jayalalithaa as a beef-eater. AIADMK workers came in batches, burnt copies of the magazine and threw stones, damaging window shields, cars and other vehicles parked inside the office. 'Mattu kari Saapidum Maami Naan (Iam Brahmin Woman who eats beef)' was the title of the write-up, featured as the cover story of the Nakkheeran issue that hit the stands on Saturday. The article which did not mention any source was presented as a narrative of Ms.Jayalalithaa discussion with a group of people the developments in the	08.01.2012	Former Chief Minister, Selvi J.Jayalalithaa	G.O. Ms.No.38 dated 13.01.2012	Government Order
5130 of 2012	B.Kolappan, Author					

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		wake of the expulsion of her former friend Ms.Sasikala and family members from the AIADMK and her Poes Garden residence. The story claimed that Ms.Jayalalitha told her friends that there was no basis for the allegation that a 'Mylapore mafia' had entered for residence after Ms.Sasikala's expulsion. Ms.Jayalalithaa was reported as having taken exception to the alleged "campaign by DMK president M.Karunanidhi and Dravidar Kazhagam president Veeramani," that a Brahmin Coterie had replaced Ms.Sasikala and her family. Recalling how AIADMK founder M.G.Ramachandran promoted her as propaganda secretary to take on Mr.Karunanidhi, brushing aside the apprehension of many party seniors such as S.D.Somasundaram, K.A.Krishna samy and				

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		C.Ponnaiyan that her Brahmin background would be a handicap for a Dravidian party, the article reported Ms.Jayalalitha as saying that MGR had argued that she could not be considered as Brahmin as she had even cooked beef for him.				
27764 of 2012	S.Padmanabhan, Publisher & Printer	**"Jayalalithaa running her government through statements, alleges Vijayakant"** Corruption has become all-pervasive in Tamil Nadu under the AIADMK regime and even civil servants are not free from the trend, according to leader of the Opposition in the Assembly and Desiya Murpokku Dravida Kazhagam founder, Vijayakant. He alleged on Monday that illegal sand quarrying was rampant, the cost of construction material had sky-rocketed and there were irregularities in the	01.08.2012	Former Chief Minister, Selvi J.Jayalalitha	G.O. Ms.No.673 dated 04.08.2012	G.O. and complaint C.C.No.12 of 2012
27765 of 2012	Siddharth Varadarajan, Editor					

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		public distribution system. "In Dharmapuri, I found that people could get only three litres of kerosene even though they had paid for five litres". Mr.Vijayakant said development works had suffered as contractors were not coming forward to take up the works because of corruption. "The roads are in bad shape and travelling on national highways is a tough task". **Long break slammed** Mr.Vijayakant criticised Chief Minister Jayalalithaa, saying nowhere in the world had a Chief Minister taken such a long break from office. She was running the government through statements. "Former Chief Ministers C.N.Annadurai and MGR went to the U.S. for treatment.But, on their return, they resumed official work and never took a long				

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		break. He said though Ms.Jayalalithaa was issuing statements and announcing projects worth crores of rupees, the announcements remained on paper".				

Name of the Newspaper : Nakeeran

W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
31552 of 2012	1.Nakkheeran Gopal, Editor, Printer & Publisher 2.A.Kamaraj, Associate Editor 3.S.T.Elangovan, Reporter 4.Vadivel,	In page Nos.35, 36 & 37 under caption as "பெரிய இடத்து விவகாரம் "நான் யார் மகள்" ப்ரியா பேட்டி" In page No.35 "தமிழக சி.எம். ஜெயலலிதாவின் மகள் என்று சொல்லிவருகிறீர்களே.. இதில் எந்தளவு உண்மை இருக்கிறது? என்னொட மம்மிதான்	11–13 July 2012	Former Chief Minister, Selvi.J.Jayalalitha	G.O.Ms. No.554 dated 12.07.2012	G.O. and criminal complaint C.C.No.9 of 2012

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	Reported	அவங்க. 25.03.1986-ல் ஸ்ரீரங்கத்துல பிறந்தேன். (பதிலின் தொடக்கமே நம்பமுடியாத அளவில் இருந்தது) குன்னூர் செயின்ட் ஜோசப் ஸ்கூலில் படிச்ச பிறகு, வேலூரில் பி.எஸ்.சி.யும் எம்.பி.ஏ. வும் எங்க மம்மி படிக்க வச்சாங்க. என்னை அம்முன்னுதான் அவங்க செல்லமா கூப்பிடுவாங்க. காலம் வரும்போது என்னை உலகத்துக்கு அறிமுகம் செய்து வைப்பதா சொன்னாங்க, அதற்குள்ளே சில கயவர்களால் நான் வெளியே தெரிஞ்சிட்டேன்”. “மம்மியோட அரசியல் வாரிசா நான் மாறிட்டா அவங்களுக்குப் பிரச்சினைதானே. இன்னும் நிறைய விஷயங்கள் இருக்கு. என் உயிருக்கே ஆபத்து. மம்மி ஆட்சிக்கும் ஆபத்து. அதையெல்லாம் இப்ப சொன்னா, எதிர்கட்சிகளுக்கு சாதகமாயிடும் வெளியே வந்ததும் நிச்சயம் சொல்வேன்”. In page No.36 “சி.எம். மகள்னு சொல்லிக்கிறீங்க. அப்படின்னா விஜயாவும்				

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		தமிழரசியும் யார்? என்னைக் குழந்தையிலே மம்மிதான், பாதுகாப்புக்காக விஜயாகிட்டே கொடுத்தாங்க. விஜயாவோட பெண்தான் தமிழரசி காவல்துறை மிரட்டலால்தான் இப்ப என்னை விஜயா மகள்னு சொல்றாங்க". "காவல்துறை உங்களுக்கும் டார்ச்சர் கொடுத்ததா? கொஞ்ச நஞ்ச டார்ச்சர் இல்லீங்க. சென்னை தி.நகர்ல உள்ள வேதா இல்லத்தில்(!) நான் இருந்தேன் அப்பப்ப போயஸ் கார்டனுக்குப் போய் மம்மியைப் பார்ப்பேன். இந்த சமயத்தில்தான், சின்ன விசாரணைன்னு சொல்லி, கிண்டியில் உள்ள சி.பி.சி.ஐ.டி. ஆபிசுக்குக் கூட்டிட்டுப் போய் போலீசார் மிரட்டுனாங்க. 'ஏண்டி.. அம்மாவோட பொண்ணுன்னு சொல்றியா?' ன்னு கேட்டாங்க. 'அம்மாவுக்குத்தானே பொண்ணு இருக்கும்'னு சொன்னதும் ஆபாசமா திட்டுனாங்க. மூணு மணிநேரம் எனக்கு மனரீதியா டார்ச்சர் கொடுத்தாங்க".				

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		In page No.37 "சி.பி.சி.ஐ.டி.யிம் உங்க மேலே கேஸ் போட்டிருக்கே? "என்னையும் என்னோட வளர்ப்புத் தாய் விஜயாவையும் கைது செய்யணும்ங்கிறதுக்காக வே, கிருஷ்ணகிரி டவுன் டி.எஸ்.பி.யா ரவிக்குமார் இருந்தப்ப செட்டிலான பிரச்சினையில் இப்ப சி.பி.சி.ஐ.டி. டி.எஸ்.பி மேகநாதனிடம் கம்ப்ளைண்ட் வாங்கி வழக்குப் பதிவு செய்திருக்காங்க". "அதெல்லாம் எங்கம்மா எனக்குக் கொடுத்த, பினாமிகள் (1) பெயரிலான சொத்துகள். நான் இல்லாதநேரத்தில் போய் சம்பந்தப்பட்டவங்களிடம் சொத்து பற்றி விசாரித்தால் இல்லைன்னுதான் சொல்லுவாங்க. என்கிட்டே இருந்த பல ஒரிஜினல் டாக்குமெண்ட்டுகளை போலீசார் எடுத்துக்கிட்டுப் போயிட்டாங்க." "உங்க சர்ச்சையில் முரளிதரன் என்பவரின் பெயர் அடிபடுகிறதே... அவர் யார்? முரளிதரனும் நானும்				

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		ஒருவரையொருவர் விரும்புகிறோம். இது மம்மிக்குத் தெரிஞ்சி, முரளிதரனை கல்யாணம் செய்யக்கூடாதுன்னும், அவங்க பார்க்கும் மாப்பிளையைக் கட்டிக்கிட்டு அமெரிக்காவிலே செட்டிலாகணும்னு சொன்னாங்க". "திரும்பத் திரும்ப சி.எம் மகள் என்று சொல்கிறீர்கள், அதற்கான ஆதாரம் என்ன இருக்கிறது? அதை இப்போ உங்கிட்டே சொல்லமுடியாது. கோர்ட்டில் நிரூபிப்பேன். என் பள்ளிக்கூட சர்டிபிகேட், ரேஷன் கார்டு, தமிழரசியோட சர்டிபிகேட் எல்லாத்தையும் வச்சி நான் மம்மியின் மகள் இல்லைன்னு சி.பி.சி.ஐ.டி சொல்றாங்க. அதெல்லாம் வெறும் காகிதங்கள்தான்ங்கிறது எனக்கும் மம்மிக்கும் வளர்ப்பு அம்மா விஜயாவுக்கும் தெரியும்". "ப்ரியா தன்னுடைய பிறந்த ஆண்டாக சொல்லும் 1986-ல் ராஜ்ய சபா எம்.பி யாகவும் கட்சியின் கொ.ப.செவாகவும் அரசியலில்				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		முக்கியத்துவம் பெற்றிருந்தார் ஜெ. பிரபலமானவர்களை மையப்படுத்தி, ப்ரியா சொல்வது உண்மையே அல்ல. மம்மியின் மகள் என்கிற ப்ரியா, முதல்வரின் பெயரைச் சொல்லி மோசடி செய்ய நினைத்தாரா பாப்புலாரிட்டி அடைய நினைத்தாரா என்பது குழப்பமாக இருந்தாலும், அவர் தன் பிறப்பு பற்றி சொல்வதெல்லாம் 100% பொய் என்பது அவரது வார்த்தைகளாலேயே உறுதியாகிறது".				
31553 of 2012	1.Nakkheeran Gopal, Editor, Printer & publisher 2.A.Kamaraj, Associate Editor 3.Umar Mukthar @ Prakash, Reporter	"மயிலாப்பூர் மா.ப்பியாவா? ஜெ.வுடன் ஆலோசனையில் ஈடுபட்டவர்களின் பேச்சு, சசிகலா விவகாரம் பற்றித் திரும்பியுள்ளது. அதை விரும்பாத ஜெ. 'அதைப்பற்றி பேசாதீங்க. நான் தவறான விதையை விதைச்சிட்டு விஷத்தை அறுவடை பண்ணிக்கிட்டிருக்கேன்' என்று சொல்லிவிட்டு, கலைஞர் மீதும் வீரமணி மீதும் கோபத்தைத் திருப்பியிருக்கிறார். 'இவங்க இரண்டு பேரும் என் கூட இருக்கிறவங்களை மயிலாப்பூர் மா.ப்பியான்னு பிரச்சாரம் பண்ணுறாங்க. அதாவது நான் மாமியாம். என்கூட	7-10 January 2012	Former Chief Minister, Selvi.J.Jayalalitha	G.O.37 dated 13.01.2012	G.O. & Criminal complaint C.C.No.1 of 2012

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		இருக்கிறவங்க மாமிகள் அதிகமுள்ள மயிலாப்பூர் மா.்.பியாவாம். இந்த விமர்சனம் எம்.ஜி.ஆர். காலத்லேயே கட்சிக்குள்ளே வந்தது. அப்ப அவர் என்ன சொன்னார் தெரியுமா' என்று தன் முன்னே இருந்தவர்களைக் கேட்டுவிட்டு. அந்த சம்பவத்தை விளக்க ஆரம்பித்திருக்கிறார் ஜெ. நான் அரசியலுக்கு நுழைஞ்ச நேரம் அது. எம்.ஜி.ஆர். என்னைக் கூப்பிட்டு, இனி தன்னால ஊர்ஊரா சுற்ற முடியாதுன்னும், கருணாநிதிக்குப் போட்டியா ஜானகியை கொண்டு வரமுடியாதுன்னும் சொல்லி, அம்முதான் சரியான ஆள்னு என்னைக் காட்டி, கட்சி நிர்வாகிகள்கிட்டே சொன்னார். அதோடு, கொள்கை பரப்புச் செயலாளர் பதவியையும் கொடுத்தார். கே.ஏ.கே., எஸ்.டி.எஸ். போன்றவங்க கடுமையாக எதிர்த்தாங்க. அப்ப பொன்னையன் இருந்தாரு. அவரு, நம்ம கட்சியும் திராவிட இயக்கம்ங்கிற அடையாளத்தோடு இருக்கு. இதனோட கொள்கையை பரப்ப ஒரு பிராமினை				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		நியமிக்கிறது சரியா இருக்காது'ன்னு சொன்னார். அப்ப எம்.ஜி.ஆர் 'நீங்க அம்முவை பிராமின்னு நினைக்கிறீங்களா? பிராமின்னா குழைஞ்சி குழைஞ்சி பேசி காரியம் சாதிப்பாங்க. அம்மு எதையும் பட்பட்டுன்னு நேரில் பேசிடும். அப்புறம், இங்கே இருக்கிற நீங்க யாரும் மாட்டுக்கறி சாப்பிட்டிருக்க மாட்டீங்க. ஆனா, அம்மு ஸ்பென்சரிலிருந்து ஸ்பெஷல் பீ.ஃப் வாங்கி எனக்கு சமைச்சிக் கொடுத்திருக்கு. நான்தான் பழக்கமில்லாததால அதை சாப்பிடலை. மாட்டுக்கறி சாப்பிடுற அம்முவை எப்படி பிராமின்னு நினைக்கறீங்க' ன்னு சொன்னார். இன்னைக்கு கருணாநிதியும், வீரமணியும், நான் பிராமின்னும் என்கூட இருக்கிறவங்களை மயிலாப்பூர் மா.ஃபியான்னும் சொல்றாங்க" என்றபடி சிரித்திருக்கிறார்."				

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Name of the Newspaper : Times of India

W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
25377 of 2012	Sunil Nair, Resident Editor	"DMK cadres on the streets over cholera" The statement spoken by Tr.M.K.Stalin is as follows" I cannot understand how a Chief Minister can have a vacation when the whole city is suffering".	02.08.2012	Former Chief Minister, Selvi J.Jayalalitha	G.O.Ms. No.705 dated 07.08.2012	G.O. and Criminal complaint C.C.No.13 of 2012
25378 of 2012	S.Santhanagopalan, Publisher & Printer					

Name of the Newspaper : Dinamalar

W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
11624 of 2013	1.Dr.R.Krishnamurthy, Editor & Printer,	"தீபாவளி சிறப்பு பஸ்களை இயக்க "கத்துக்குட்டி டிரைவர்கள்" with a caricature that "பஸ் ஸ	06.11.2012	Former Chief Minister, Selvi	G.O.Ms.No.961 dt.12.11.2012	Criminal complaint C.C.No.2 of 2013

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
	2.Dr.R.Lakshmipathi, Publisher	டேரிங்கை பார்த்து இருக்கியா.. அப்படின்னா You select...!" பெரும்பாலான மக்கள், சொந்த ஊர்களுக்குச் செல்ல, அரசு போக்குவரத்துக் கழக பஸ்களை நம்பியே உள்ளனர். தீபாவளிக்கு முன், பின், ஒருவார காலம், கோட்டங்கள் தோறும், 100 சிறப்பு பஸ்களை இயக்கு முடிவு செய்து, அதற்கான பணிகள் நடக்கின்றன. இதற்காக, கடந்த மாதம், புதிதாக ஆள் தேர்வு செய்த டிரைவர், கண்டக்டர்களுக்கு, அவசர கதியில், போக்குவரத்துக் கழகங்கள் பயிற்சியை வழங்குகிறது. பயிற்சி பெறும் இவர்களைக் கொண்டு, தீபாவளி சிறப்பு பஸ்களை இயக்க, போக்குவரத்துக் கழகங்கள் முடிவு செய்துள்ளன என்ற அதிர்ச்சி தகவல் வெளியாகியுள்ளது. இம்மாதம், 10 முதல், 17ஆம் தேதி வரை போக்குவரத்துக் கழக டிரைவர், கண்டக்டர்கள் விடுப்ப எடுக்கக்கூடாது: 24 மணி நேரமும் பணியாற்ற தயாராக இருக்க வேண்டும் என, தெரிவித்துள்ளனர். அனுபவமில்லாத டிரைவர்கள், புதிய வழித்தடத்தில், இரவு,		J.Jayalalitha		

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		பகல் ஓய்வின்றி, சிறப்பு பஸ்களை இயக்கும் போது, விபத்து ஏற்படும் அபாயம் உள்ளது. தமிழகத்தில் அரசு போக்குவரத்துக் கழகங்களில் 6,910 டிரைவர், 7,402 நடத்துனர், 2,349 தொழில்நுட்ப பணியாளர்கள் என 16,661 காலிப் பணியிடத்தை நிரப்ப, முதல்வர் ஜெயலலிதா உத்தரவிட்டார். பல முறைகேடுகளுக்கு பின், தேர்வு செய்யப்பட்ட, புதிய டிரைவர், கண்டக்டர்களுக்கு பயிற்சி வழங்கப்படுகிறது.				
11625 of 2013	1.Dr.R.Krishnamurthy, Editor & Printer, 2.Dr.R.Lakshmipathi, Publisher	**"மந்திரி தம்பியால் அரசு கேபிள் 'டிவி' அபகரிப்பு?** அதிகாரி துணையுடன் துரத்தப்பட்ட ஆபரேட்டர். அரசு அனுமதி பெறாத, உள்ளூர் சேனல்களின் ஒளிபரப்பை நிறுத்தும்படி, மேலாண்மை இயக்குநர் உத்தரவிட்டார். அதன்படி, அமைச்சர் செந்தில்பாலாஜி ஆதரவாளர் இயக்கி வந்த ஜெயம், வானவில், எம்.பி., தம்பிதுரை ஆதரவாளர் இயக்கி வந்த, சிட்டி ஆகிய சேனல்கள் உட்பட அனைத்து உள்ளூர் சேனல் ஒளிபரப்பையும் நிறுத்தினேன்". **மிரட்டல்:**	08.11.2012	Minister for Transport, Mr.Senthil Balaji	G.O.Ms.NO.1056 dt.19.12.2012	Criminal Complaint C.C.No.7 of 2013

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		அமைச்சர் செந்தில்பாலாஜி ஆதரவாளரும், அவரது தம்பி அசோக்கின் நண்பருமான, ஜெயம், 'டிவி'ளை நடத்தி வரும் மூர்த்தி, என்னை தொடர்பு கொண்டு, 'எதற்காக நிறுத்தினாய்?' என்று மிரட்டினார். 'அதிகாரி உத்தரவு... நான் என்ன செய்ய முடியும்?' என்று கேட்டேன். அப்போதே என்னை துரத்தியடிப்பதாக கூறினார்".				
11626 of 2013	1.Dr.R.Krishnamurthy, Editor & Printer, 2.Dr.R.Lakshmipathi, Publisher	"அரசு செய்தி துறை இணையதளத்தில் அ.தி.மு.க.விற்கு தனி இணையதளம்" அரசின் செய்தித்துறை, வெப்சைட்டில், அ.தி.மு.க.விற்கு தனி "வெப்சைட்" ஒதுக்கப்பட்டுள்ளதால், இணையதள பார்வையாளர்கள் அதிர்ச்சியடைந்துள்ளனர். செய்தித்துறை இயக்குநர் குமரகுருபரன் பொறுப்பேற்ற பின், அந்தந்த மாவட்டங்களில் நடக்கும் அரசு நலத்திட்ட உதவிகள், அரசு விழாக்கள் குறித்த செய்திகளை, பத்திரிகைகளுக்கு வழங்க வேண்டும். அவற்றை செய்தி மக்கள் தொடர்பு அலுவலர்கள், செய்தித் துறை	11.02.2013	Director of Information and public relations and Ex.Officio Deputy secretary to Government and Religious Endowments and Information Department, Mr.J.Kumaraguruparan	G.O.Ms.No.173 dt.21.02.2013	Criminal Complaint C.C.No.22 of 2013

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		இயக்குனரக இணையதளத்தில் வெளியிட வேண்டும் என, கண்டிப்பான உத்தரவு பிறப்பித்துள்ளார். மேலும், செய்தி வெளிவந்த நாளிதழ்களின் பெயர்களுடன், இயக்குனரகத்திற்கு, அவற்றை அனுப்ப வேண்டும். அன்றாடம் இந்த பணிகளை தொய்வின்றி செய்ய வேண்டும் எனவும் உத்தரவிட்டுள்ளார். இதற்காக, செய்தித்துறை சார்பில், www.tndipr.gov.in இணையதள முகவரி வழங்கப்பட்டு உள்ளது. இந்த இணையதளத்தில், செய்தித் துறை சார்ந்த அனைத்து தகவல்கள், முதல்வர் வெளியிடும் அறிக்கை, அரசு நலத்திட்டம், பத்திரிக்கையாளருக்கான மருத்துவ காப்பீடு, இலவச சலுகை, பென்ஷன் திட்டங்கள் குறித்த விவரங்கள் மட்டுமே இருக்க வேண்டும். ஆனால், செய்தித் துறை, "வெப்சைட்"டை திறந்தால், அ.தி.மு.க.விற்கு என தனி, "வெப்சைட்" ஒதுக்கியுள்ளனர். அதில், அக்கட்சியின் வரலாறு, அன்றாடம் நடைபெறும் அனைத்து நிகழ்வுகளும்				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		இடம்பெற்றுள்ளன. அரசு "வெப்சைட்டில்" ஒதுக்கியிருப்பது வியப்பை தருகிறது. பேயர் வெளியிட விரும்பாத ஒரு அரசு அதிகாரி கூறுகையில் "அரசு துறைகளுக்கென ஒதுக்கப்படும் இணையதளத்தில், கட்சிக்கென இணையதனம் இருப்பது தவறு. ஆளுங்கட்சியாக இருப்பதால், முதல்வரிடம் நற்பெயர் வாங்குவதற்காக, இத்துறை அதிகாரிகள், கட்சிக்கு முக்கியத்துவம் தந்துள்ளனர்," என்றார்.				
11627 of 2013	1.Dr.R.Krishnamurthy, Editor & Printer, 2.Dr.R.Lakshmipathi, Publisher	"அலட்சியம் கிடைக்கும் மின்சாரத்தை பயன்படுத்தாமல் மின் வாரியம் ..... கரும்பு ஆலைகளில் உள் மின் உற்பத்தி நிலையங்கள் முடக்கம்" தமிழகத்தில், 4,000 மெகாவாட் மின் பற்றாக்குறை இருக்கும் நேரத்தில், சர்க்கரை ஆலைகள் மூலம் கிடைக்கும் மின்வாரியம் முடக்க முயற்சிப்பது அதிருப்தியை ஏற்படுத்தியுள்ளது. கரும்பு சக்கை மூலம் உற்பத்தி செய்து கொடுக்கும் மின்சாரத்திற்கு, பணம் வழங்காமல் இருப்பதோடு, மின் உற்பத்தியாகும்	10.11.2012	Tr.Natham R.Viswanathan, Hon'ble Minister for Electricity and Prohibition and Excise and TANGEDCO of Tamil Nadu	G.O.Ms.No.1061 dated 20.12.2012	Criminal Complaint C.C.No.10 of 2013

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		செலவையும், மின்வாரியம் அளிப்பதில்லை என, சக்கரை ஆலை நிர்வாகங்கள் கூறுகின்றன. மேலும் சர்க்கரை ஆலைகள் உற்பத்தி செய்யும் மின்சாரம் தேவை இல்லை என்றும், வாரியம் கூறுவதாகவும், அவர்கள் புகார் கூறுகின்றனர். தமிழகம் கடுமையான மின்வெட்டை சந்தித்து கொண்டிருக்கும் இந்த நேரத்தில் மின் உற்பத்தியே செய்ய வேண்டாம் எனக் கூறுவது கொள்கை முரண்பாடாக உள்ளது. மரபு சாரா எரிசக்தி திட்டங்களுக்கு முக்கியத்துவம் அளித்து, தமிழக முதல்வர் பல திட்டங்களை அறிவித்து வரும் நேரத்தில், ஏற்கனவே செயல்பாட்டில் உள்ள திட்டங்களில் இருந்து கிடைக்கும் மின்சாரத்தை பயன்படுத்தாமல் அதை முடக்க மின் வாரியம் முயற்சிப்பதாகவும் குற்றம் சாட்டுகினறனர். தற்போது, தமிழகத்தில், 4,000 மெகாவாட் அளவுக்கு மின் பற்றாக்குறை உள்ளது. இந்நிலையில், சர்க்கரை ஆலைகளில் இருந்து கிடைக்கும் மின்சாரத்தையும்				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		பயன்படுத்தி கொள்ளாமல், அந்த மின் உற்பத்தியை முடக்கம் செயலில் மின்வாரியம் ஈடுபடுவது விந்தையாக உள்ளது.				
11628 of 2013	1.Dr.R.Krishnamurthy, Editor & Printer, 2.Dr.R.Lakshmipathi, Publisher	"அமைச்சர் ஆய்வின்போது பெண் ஊழியர் மரணம்" கோதைநாயகியின் திடீர் மரணம், கோ-ஆப்டெக்ஸ் ஊழியர்கள் மத்தியில் அதிர்ச்சியை ஏற்படுத்தியது. அமைச்சர் திட்டியதால் தான், கோதைநாயகி இறந்தார் என, ஊழியர்கள் கூறுகின்றனர். ஆய்வின் போது, அமைச்சருடன் அதிகாரிகள் மற்றும் ஆளும் கட்சியினர் மட்டுமே இருந்ததால், வேறு சில நபர்களை மட்டுமே அமைச்சர் கடிந்து கொண்டார்.	07.11.2012	Minister for Handloom and Textiles, Dr.S.Sundarajan	G.O.Ms.No.1060 dt. 20.12.2012	Criminal Complaint C.C.No.11 of 2013

Name of the Newspaper : Tamil Murasu

W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
4860	R.M.R.Ram	அதன்பின் நிருபர்களிடம் ஸ்டாலின்	02.12.	Former	G.O.Ms.	Criminal

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
of 2012	esh, Editor, Printer & Publisher	கூறியதாவது: எனது மகன் உதயநிதி ஸ்டாலின், நண்பர் ராஜா சங்கர் மற்றும் சிலர் மீது பொய் வழக்கு பதிவு செய்யப்பட்டுள்ளது. போலீசாரே இது தொடர்பாக பத்திரிகைகளுக்கு செய்தி கொடுத்துள்ளனர். எப்.ஐ.ஆர் என்பது பர்ஸ்ட் இன்பர்மேஷன் ரிப்போர்ட்" என்பது தான். ஆனால், அதிமுக ஆட்சியில் அது "பிராட் இன்பர்மேஷன் ரிப்போர்ட்"டாக உள்ளது. என் மீதும், குடும்பத்தார் மீதும் பொய் புகார் செய்யப்பட்டுள்ளது. இது பற்றி பேசுவதற்காக டிஜிபியை சந்திக்க வந்தேன். அவரை சந்திக்கும் வாய்ப்பு கிடைக்கவில்லை. நிர்வாக பிரிவு ஏடிஜிபியிடம் 2 மனுக்கள் கொடுத்துள்ளேன். முதல் மனுவில், "என் மீது பொய் வழக்கு போடப்பட்டுள்ளது. அதில் கூறப்பட்டுள்ள சொத்துக்கும் எனக்கோ என் குடம்பத்தாருக்கோ எந்த சம்மந்தமும் இல்லை. உதயநிதி ஸ்டாலின் நடத்தும் சினிமா கம்பெனிக்கு வாடகை அடிப்படையில் ஒப்பந்தம் செய்யப்பட்டு மகளும், மருமகனும் அந்த வீட்டில்	2011	Chief Minister, Selvi J.Jayalalitha	No.1224 dated 23.12.2011	complaint C.C.No.3 of 2012
4861 of 2012	R.M.R.Ramesh, Editor, Printer & Publisher					Government Order

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		தங்கியுள்ளனர். பொய் புகார் கொடுத்தவர் மீது நடவடிக்கை எடுக்க வேண்டும்" என்று கூறியுள்ளேன். எந்த வழக்காக இருந்தாலும் அதை சந்திக்க தயாராக இருக்கிறேன். என்னை கைது செய்யுங்கள் என்றுதான் ஏடிஜிபியிடம் சொன்னேன். அதை கேட்டு அவர் முழிக்கிறார். உண்மையான நில ஆக்கிரமிப்பு புகார் மீது நடவடிக்கை எடுக்க வேண்டும் என்றால் கோடநாடு எஸ்டேட் பினாமி பெயரில் ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது. சிறுதாவூர் பங்களா கட்டியுள்ள இடம் தலித் மக்களின் இடம். அது ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது. முதல்வர் ஓய்வுக்காக அங்கு சென்றுதான் தங்குகிறார். இதனால் இந்த இரண்டு நில ஆக்கிரமிப்பு புகார் குறித்து முதல்வர் மீது நடவடிக்கை எடுக்க வேண்டும் என்றும், அவர் மீது எப்ஐஆர் பதிவு செய்ய வேண்டும் என்றும் 2-வது மனுவில் கூறியுள்ளேன். அதில் நியாயம் கிடைக்கும் என்று நம்புகிறேன். இவ்வாறு மு.க.ஸ்டாலின் கூறினார்.				

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Name of the Newspaper : Murasoli

W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
23679 of 2012	S.Selvam, Printer, Publisher and Editor	கலைஞர் பதில்கள் கேள்வி:- தமிழகத்தில் இதுவரை எத்தனையோ முதலமைச்சர்கள் இருந்திருக்கிறார்கள். அவர்களில் எந்தவொரு முதலமைச்சராவது பதவியில் இருக்கும்போதே, இரண்டு மாத காலத்திற்கு ஓய்வு என்று ஏதோ ஒரு ஊரில் போய் தங்கியது உண்டா? கலைஞர்:- இதே கேள்வியைத்தான் பா.ம.க. நிறுவனர் டாக்டர் ராமதாசும் கேட்டிருக்கிறார். இந்த அளவிற்கு அவர்களுக்கு ஓய்வு தேவைப்படுகிறது போலும்! அதைப்பற்றிய கவலை, அவருக்கு வாக்களித்தவர்களுக்கல்லவா ஏற்படவேண்டும். "Kalaignar Pathilgal"	30.07.2012	Former Chief Minister, Selvi J.Jayalalitha	G.O.Ms. No.709 dt. 8.8.2012	Government order
25296 of 2012						Criminal Complaint C.C.No.14 of 2012

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		Question:- There have been many Chief Ministers of Tamil Nadu and has any Chief Minister while holding position taken a vacation for over two months. Answer:-A similar question was asked by the P.M.K.Founder Dr.Ramadass and may be the Chief Minister requires such vacation. This is a matter of concern for the voters who have voted.				
23680 of 2012	S.Selvam, Printer, Publisher & Editor	"என் பேச்சு உண்மைக்கு மாறானது என்றால் ஆதாரப்பூர்வமாக நிருபிக்க வேண்டியதுதானே! ஏதிர்கட்சிகளின் செய்திகளை, பேச்சுக்களை வெளியிடும் பத்திரிகைகள் மீது வழக்கு! வாரக்கணக்கில் மாதக்கணக்கில் முதலமைச்சர் ஓய்வு எடுத்தால் மக்கள் பிரதிநிதிகள்	09.08.2012	Former Chief Minister, Selvi J.Jayalalitha	G.O.No.716 dt.14.8.2012	Government Order
25297 of 2012						Criminal Complaint C.C.No.16 of 2012

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		அதைப்பற்றி பேசக்கூடாதா? தமிழ்நாட்டில் அறிவிக்கப்படாத நெருக்கடி நிலையா நீடிக்கிறது? ஜெயலலிதாவின் வழக்கை நீதிமன்றத்தில் சந்திப்பேன்! The statement made by Tr.M.K.Stalin is as under:- "மேலும் தமது அறிக்கையில், வாரக்கணக்கில், மாதக் கணக்கில் முதலமைச்சர் ஓய்வு எடுத்தால் மக்கள் பிரதிநிதிகள் அதைப்பற்றி பேசக்கூடாதா என்றும் ஜெயலலிதாவின் வழக்கை நீதிமன்றத்தில் சட்டப்படி சந்திப்பேன் என்றும் தளபதி மு.க.ஸ்டாலின் அவர்கள் குறிப்பிட்டுள்ளார். "அம்மையார் கடந்த ஒன்றரை மாதமாக ஆற்றிய பணிகள் என்ன? கொடநாட்டில் ஒரு முதலமைச்சர் ஓய்வு				

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		என்றால் ஒரு சில நாட்கள் இருக்கலாம். ஆனால், வாரக்கணக்கில், மாதக்கணக்கில் முதலமைச்சர் ஓய்வு என்றால் மக்கள் பிரதிநிதிகள் அதைப்பற்றி பேசக்கூடாதா? அன்றாடம் அறிக்கை ஒன்று முதல் அமைச்சர் பெயரில் வந்ததைத் தவிர வேறென்ன பணி முறையாக நடைபெற்றது?				
33290 of 2012	S.Selvam, Printer, Publisher & Editor	"கலைஞர் பதில்கள்" கேள்வி:- "ஆனந்த விகடன்" வார இதழில் "கோட்டையில் முதல்வருக்கு அமைச்சர்களின் மரியாதை" என்ற தலைப்புடன் ஒரு நீண்ட "கியூ" வரிசையில் அமைச்சர்கள் எல்லாம் வரிசையாக கும்பிட்ட கையோடு முதல்வரை வணங்கும் படத்தோடு எழுதப்பட்டுள்ள கட்டுரை எப்படி?	23.08.2012	Minister for Tourism, Tmt. S.Gokula Indira	G.O.Ms. No.874 dt.12.10.2012	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		கலைஞர்:- அந்தக் கட்டுரையில் அ.தி.மு.க. அமைச்சர்களும், அவர்களுடைய உதவியாளர்களும் எப்படி நடந்து கொள்கிறார்கள் என்று எழுதப்பட்டுள்ளது. அதிலே உள்ள சில முக்கிய பகுதிகள் வருமாறு:- பதவிப் பிரமாணத்தைக் குடும்ப தலைவர் ஏற்றுக்கொண்டாலும், குடும்ப உறுப்பினர்கள் மூலம் ∴பைல்களை க்ளியர் செய்வது நடக்கிறது; வனத்துறை அமைச்சர் பச்சைமாலுக்கு அவரது மனைவியும், கோகுல இந்திராவுக்கு அவரது கணவரும்தான் சேனல்கள்." Kalaignar Pathilgal Question: asking an opinion from Tr.Karunanidhi about the photo published in the weekly "Ananda Vikatan"on the heading "respect given				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		by the Ministers to the Chief Minister" wherein the photo showed them standing in a straight line with folded hands. Answer:Some of the Ministers in the Cabinet are under the hands of their relatives. Even though Minister heads the department, files are being cleared by their family members. The husband of Hon'ble Minister for Tourism, Tmt.S.Gokula Indira is the channel for the said Minister.				
33291 of 2012	S.Selvam, Printer, Publisher & Editor	கலைஞர் பதில்கள் கேள்வி:- "ஆனந்த விகடன்" வார இதழில் "கோட்டையில் முதல்வருக்கு அமைச்சர்களின் மரியாதை" என்ற	23.08.2012	Minister for Labour Tr.S.T.Chellapandian	G.O.Ms. No.954 dt. 6.11.2012	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		தலைப்புடன் ஒரு நீண்ட "கியூ" வரிசையில் அமைச்சர்கள் எல்லாம் வரிசையாக கும்பிட்ட கையோடு முதல்வரை வணங்கும் படத்தோடு எழுதப்பட்டுள்ள கட்டுரை எப்படி? கலைஞர்:- அந்தக் கட்டுரையில் அ.தி.மு.க. அமைச்சர்களும், அவர்களுடைய உதவியாளர்களும் எப்படி நடந்து கொள்கிறார்கள் என்று எழுதப்பட்டுள்ளது. அதிலே உள்ள சில முக்கிய பகுதிகள் வருமாறு:- "பதவிப் பிரமாணத்தைக் குடும்ப தலைவர் ஏற்றுக்கொண்டாலும், குடும்ப உறுப்பினர்கள் மூலம் .'.பைல்களை க்ளியர் செய்வது நடக்கிறது; "சி.த.செல்லபாண்டியனின் மகன்களுடைய ஆட்சி தூத்துக்குடியைத் தாண்டி சென்னை வரைக்கும்				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		வந்துவிட்டது.” Kalaignar Pathilgal Question: asking an opinion from Tr.Karunanidhi about the photo published in the weekly “Ananda Vikatan”on the heading “respect given by the Ministers to the Chief Minister” wherein the photo showed them standing in a straight line with folded hands. Answer: Some of the Ministers in the Cabinet are under the hands of their relatives. Even though Minister heads the department, files are being cleared by his family members. The sons of Hon’ble Minister for Labour Tr.S.T.Chellapandian had extended beyond Thoothukudi and				

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		reached up to Chennai.				
32392 of 2012	S.Selvam, Printer, Publisher & Editor	கலைஞர் பதில்கள் கேள்வி:- "ஆனந்த விகடன்" வார இதழில் "கோட்டையில் முதல்வருக்கு அமைச்சர்களின் மரியாதை" என்ற தலைப்புடன் ஒரு நீண்ட "கியூ" வரிசையில் அமைச்சர்கள் எல்லாம் வரிசையாக கும்பிட்ட கையோடு முதல்வரை வணங்கும் படத்தோடு எழுதப்பட்டுள்ள கட்டுரை எப்படி? கலைஞர்:- அந்தக் கட்டுரையில் அ.தி.மு.க. அமைச்சர்களும், அவர்களுடைய உதவியாளர்களும் எப்படி நடந்து கொள்கிறார்கள் என்று எழுதப்பட்டுள்ளது. அதிலே உள்ள சில முக்கிய பகுதிகள் வருமாறு:- "பதவிப் பிரமாணத்தைக் குடும்ப	23.08.2012	Minister for Forest Mr.K.T. Pachamal	G.O.Ms. No.840 dt.03.10.2012	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		தலைவர் ஏற்றுக்கொண்டாலும், குடும்ப உறுப்பினர்கள் மூலம் .ைபல்களை க்ளியர் செய்வது நடக்கிறது; பள்ளி கல்வித் துறை அமைச்சர் சிவபதியன் இரண்டு தம்பிகள் அடுத்தடுத்த இரண்டு ஓட்டல்களில் உட்கார்ந்து கொண்டு துறை விஷயங்களை டீல் செய்கிறார்கள். வனத்துறை அமைச்சர் பச்சைமாலுக்கு அவரது மனைவியும், கோகுல இந்திராவுக்கு அவரது கணவரும்தான் சேனல்கள்.'' Kalaignar Pathilgal Question: asking an opinion from Tr.Karunanidhi about the photo published in the weekly ''Ananda Vikatan''on the heading ''respect given by the Ministers to the Chief Minister''wherein the				

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		photo showed them standing in a straight line with folded hands. Answer:Some of the Ministers in the Cabinet are under the hands of their relatives. Even though Minister heads the department, files are being cleared by his family members.The two brothers of Hon'ble Minister for Education, Mr.Sivapadhiyan, are dealing with the matters about the department in two subsequent, hotels. The wife of Hon'ble Minister for Forests Thiru.K.T.Pachamal is the channel for the said minister.				
32393 of 2012	S.Selvam, Printer, Publisher & Editor	கலைஞர் பதில்கள் கேள்வி:- "ஆனந்த விகடன்" வார இதழில் "கோட்டையில் முதல்வருக்கு	23.08.2012	Minister for Finance. Mr.O.Paneerselva	G.O.Ms. No.927 dt.25.10. 2012	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		அமைச்சர்களின் மரியாதை" என்ற தலைப்புடன் ஒரு நீண்ட "கியூ" வரிசையில் அமைச்சர்கள் எல்லாம் வரிசையாக கும்பிட்ட கையோடு முதல்வரை வணங்கும் படத்தோடு எழுதப்பட்டுள்ள கட்டுரை எப்படி? கலைஞர்:- அந்தக் கட்டுரையில் அ.தி.மு.க. அமைச்சர்களும், அவர்களுடைய உதவியாளர்களும் எப்படி நடந்து கொள்கிறார்கள் என்று எழுதப்பட்டுள்ளது. அதிலே உள்ள சில முக்கிய பகுதிகள் வருமாறு:- "பதவிப் பிரமாணத்தைக் குடும்ப தலைவர் ஏற்றுக்கொண்டாலும், குடும்ப உறுப்பினர்கள் மூலம் ∴பைல்களை க்ளியர் செய்வது நடக்கிறது; "ஓ.பன்னீர்செல்வத்தின் மகன்கள் அரசியல் ரீதியாகவும்		m		

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		ஆட்சியியல் ரீதியாகவும் முன்னேறிக் கொண்டிருக்கிறார்கள். தம்பியும் தன் பங்குக்கு ஆக்டிவ் ஆக இருக்கிறார்”. Kalaignar Pathilgal Question: asking an opinion from Tr.Karunanidhi about the photo published in the weekly “Ananda Vikatan”on the heading “respect given by the Ministers to the Chief Minister”wherein the photo showed them standing in a straight line with folded hands. Answer:Some of the Ministers in the Cabinet are under the hands of their relatives. Even though Minister heads the department, files are being cleared by his sons and brother. The sons and brother of Hon’ble				

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		Minister for finance, Tr.O.Paneerselvam, are the channel for the said Minister.				
32394 of 2012	S.Selvam, Printer, Publisher & Editor	கலைஞர் பதில்கள் கேள்வி:- "ஆனந்த விகடன்" வார இதழில் "கோட்டையில் முதல்வருக்கு அமைச்சர்களின் மரியாதை" என்ற தலைப்புடன் ஒரு நீண்ட "கியூ" வரிசையில் அமைச்சர்கள் எல்லாம் வரிசையாக கும்பிட்ட கையோடு முதல்வரை வணங்கும் படத்தோடு எழுதப்பட்டுள்ள கட்டுரை எப்படி? கலைஞர்:- அந்தக் கட்டுரையில் அ.தி.மு.க. அமைச்சர்களும், அவர்களுடைய உதவியாளர்களும் எப்படி நடந்து கொள்கிறார்கள் என்று எழுதப்பட்டுள்ளது. அதிலே உள்ள சில முக்கிய பகுதிகள் வருமாறு:- "பதவிப்	23.08.2012	Minister for School Education, Sports & Youth Welfare. Thiru. N.R.Sivapathy	G.O.Ms. No.839 dt.03.10.2012	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		பிரமாணத்தைக் குடும்ப தலைவர் ஏற்றுக்கொண்டாலும், குடும்ப உறுப்பினர்கள் மூலம் ∴பைல்களை க்ளியர் செய்வது நடக்கிறது; பள்ளி கல்வித் துறை அமைச்சர் சிவபதியன் இரண்டு தம்பிகள் அடுத்தடுத்த இரண்டு ஓட்டல்களில் உட்கார்ந்து கொண்டு துறை விஷயங்களை டீல் செய்கிறார்கள். Kalaignar Pathilgal Question: asking an opinion from Tr.Karunanidhi about the photo published in the weekly "Ananda Vikatan"on the heading "respect given by the Ministers to the Chief Minister"wherein the photo showed them standing in a straight line with folded hands. Answer:Some of the				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		Ministers in the Cabinet are under the hands of their relatives. Even though Minister heads the department, files are being cleared by his family members.The brothers of Hon'ble Minister for School Education, Sports and Youth Welfare Thiru.Sivapadhi, are the channel for the said Minister.				
33218 of 2013	S.Selvam, Printer, Publisher & Editor	அ.தி.மு.க. அரசை செயல்டச் சொல்வதற்கே ஒரு கண்டன ஆர்ப்பாட்டம் தேவைப்படுகிறது!" "நோய் இருக்கிறதா இல்லையா என்பதல்ல முக்கியம். அந்த நோய் வந்தால் உடனடியாக மேற்கொள்ளப்பட வேண்டிய நடவடிக்கை மேற்கொள்ளப்படவில்லை என்பதுதான் தற்போது சென்னை மாநகராட்சி நிர்வாகத்தின் மீதுள்ள	01.08.2012	Former Chief Minister, Selvi J.Jayalalitha	G.O.Ms. No.757 dt.03.09.2013	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		குற்றச்சாட்டு. அதை கண்டிக்கும் விதத்தில்தான் தி.மு.க. சார்பில் தளபதி மு.க.ஸ்டாலின் அவர்கள் தலைமையில் சென்னையில் மாபெரும் ஆர்ப்பாட்டம் நடத்தப்படுகிறது. முறைப்படி நடவடிக்கை எடுக்காமல், விதண்டாவாதமாக அறிக்கை விடுவதும், சவால் விடுவதும் அ.தி.மு.க. அரசுக்கு பொழுது போக்காகிவிட்டது. இதைத்தான், "தமிழகத்தின் எல்லையிலிருக்கும் கொடநாட்டிலிருந்து உண்ணாது உழைத்து, உறங்காது விழித்து பொறுப்புக்களை தவறாது புரிந்து வரும் ஆட்சி"என்று அவர்களாகக் கூறிக்கொள்கிறார்களோ". There needs to be meeting condemning the Government to make it work:				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		In the event of disease outbreak, the Chennai Corporation is not in a position to take appropriate remedial measure. M.K.Stalin is to hold a meeting condemning this issue. The Government has not taken any action on the complaint given and instead of taking actions, the Government is making statements and challenging the opposition. The Government which is working hard without proper food, proper sleep, and are attending to their work without any error.				
23681 of 2012	S.Selvam, Printer, Publisher & Editor	தமிழக ஆறுகளில் மணல் அள்ளி கேரளாவுக்கு கடத்திச் சென்று கொள்ளை லாபம் குவித்திடும் அ.தி.மு.க.வினர்! பாலாற்றில் மணல்	20.05.2012	Former Chief Minister, Selvi.J.Jeyalalitha	G.O.Ms. No.457 dt. 21.05.2012	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		அள்ளுவதை தடுத்து நிறுத்திடும் கிராம மக்களை பழிவாங்கிட குடிநீர் கிணற்றில் விஷம் கலந்த கொடுமை! ஜெயலலிதாவின் மாபியா மணல் தாதாக்கள் அராஜகம்! அதிகாரிகள் பொதுமக்களை கொன்று குவித்திட சதித்திட்டம்! மணல் கொள்ளையால் பல்லாயிரக்கணக்கான கிராமங்கள் குடிநீரின்றி தவிப்பு! தனியாருக்கு ஏரி குளங்களில் மணல் அள்ளிட அனுமதியா! மக்கள் குமுறல்! தமிழக ஆறுகளில் மணல் அள்ளி கேரளாவுக்குக் கடத்தி கொள்ளை லாபம் குவித்திடும் அ.தி.மு.க. மணல் கொள்ளைக் கூட்டம், பாலாற்றில் மணல் அள்ளுவரை தடுத்த கிராம மக்கள்மீது பழி தீர்த்திட குடிநீரில் விஷம் கலந்த கொடுமையும் அரங்கேற்றியுள்ளதுடன் ஜெயலலிதாவின்				

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
		மாபியா மணல் தாதாக்கள், அரசு அதிகாரிகளை, பொதுமக்களை கொன்று குவித்திட சதித்திட்டம் தீட்டி தொடர் கடத்தல் செயலில் ஈடுபட்டு வருகின்றனர். குடிநீர் இன்றி மக்கள் தவிக்கும்போது தனியாருக்கு மணல் அள்ள அ.தி.மு.க. அரசு தாரை வார்த்துள்ளது மக்களிடையே கொந்தளிப்பை ஏற்படுத்தியுள்ளது.”				

Name of the Newspaper: Dinakaran

W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
11727 of 2012	R.M.R. Ramesh, Editor,	தமிழகத்தில் நடப்பது ஆட்சியா சர்வாதிகார ஆட்சியா” “இன்றைய முதல்வரும்	31.01.2013	Former Chief Minister,	G.O.Ms.No.120 dt.04.02	Government Order

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W.P. No.	*Name of the Petitioners*	*Alleged defamatory Article published along with english translation*	*Date of Publications*	*Name of the Public Figure who has been allegedly defamed*	*G.O. sanctioning prosecution and date*	*Nature of Challenge*
11728 of 2013	Printer & Publisher	சரி, நானும் சரி தமிழ் திரையுலகில் இருந்துதான் அரசியலுக்கு வந்துள்ளோம். ஏறிவந்த ஏணியை எட்டி உதைப்பதை வழக்கமாக கொண்டுள்ள முதல்வர் ஜெயலலிதா. இப்படத்தின் பிரச்சனைக்கு காரணமே, ஜெயா தொலைக்காட்சிக்கு விஸ்வரூபம் படத்தின் உரிமையை வழங்காதது என்றும், மத்திய நிதியமைச்சர் ப.சிதம்பரம் விழாவில் கமல்ஹாசன் அவரை பாராட்டி பேசியதும் தான் காரணமாக இருக்கக் கூடும்.”		Selvi. J.Jayalalitha	.2013	C.C.No.14 of 2013

5. Heard Mr.P.S.Raman, learned Senior Counsel representing Mr.M.S.Murali, learned counsel for the Petitioners in W.P.Nos.5129, 5130, 27764 & 27765 of 2012, Mr.P.T.Perumal, learned counsel for the petitioners in W.P.Nos.31552 & 31553 of 2012, Mr.Prasanth Rajagopal, learned counsel for the petitioners in W.P.Nos.25377 & 25378 of 2012,

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Mr.I.Subramanian, learned Senior Counsel representing Mr.S.Elambharathi, learned counsel for the petitioners in W.P.Nos.11624 to 11628 of 2013, Ms.M.Sneha, learned counsel for the petitioner in W.P.Nos.4860 & 4861 of 2012, Mr.P.Kumaresan, learned counsel appearing for the petitioners in W.P.Nos.23679, 25296, 23680, 25297, 33290, 33291, 32392, 32393, 32394, 23681 of 2012 and 33218 of 2013, Ms.M.Sneha, learned counsel representing Mr.B.K.Girish Neelakantan, learned counsel for the petitioner in W.P.Nos.11727 & 11728 of 2013, Mr.J.Madana Gopal Rao, learned Central Government Standing Counsel for the Respondent 1 and Mr.S.R.Rajagopalan, learned Additional Advocate General assisted by Mr.K.Ravikumar, learned Additional Government Pleader for the respondents 2 to 3.

6. COMMON SUBMISSIONS MADE BY THE RESPECTIVE LEARNED COUNSELS FOR THE RESPECTIVE PETITIONERS:

(a) Freedom of press is the foundation of a democratic society and airing of a different view point or criticism would not amount to defamation.

(b) The news items had been published in pursuit of truth and for

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public good and no malice is involved.

(c) The concept of defamation in relation to those holding public office or the Government is qualitatively different from defamation in respect of private individuals. In a free democratic society, those who hold public officer in Government and are responsible for public administration should be open to criticism and citizens have a legitimate and substantial interest/right to know the conduct of public officials as they have an influential role in society.

(d) The news item is not pertaining to the conduct of the public functionary in the discharge of his/her public functions.

(e) The sanction for prosecution granted to the public prosecutor has been passed in utter disregard of section 199(2) Cr.P.C. The impugned sanction has been accorded by total non-application of mind and is nothing but an abuse of process of law and is also against the Principles of natural justice.

(f) The Sessions Court by total non-application of mind and without any material has taken cognizance of the complaints.

(g) The complaints are an attempt to interfere with the fundamental right of free speech and expression guaranteed under

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Article 19(1)(a) read with Article 21 of the Constitution of India.

7. CASE SPECIFIC SUBMISSIONS:

(a) W.P.Nos.5129 & 5130 of 2012

The petitioner in W.P.No.5129 of 2012 was the "Editor in Chief", printer and publisher and the petitioner in W.P.No.5130 of 2012 was the "Author and correspondent" of the Daily Newspaper "The Hindu" when the alleged defamatory article was published. The newspaper published on 08.01.2012 under the Caption "AIADMK activists attack Nakkeeran Office". The said news item published in "The Hindu" is nothing but a true and factual narration of what happened in Nakkeeran office and how the office was attacked and the reasons therefor.

(b) W.P.No.27764 & 27765 of 2012

The petitioner in W.P.No.27764 of 2012 was the Publisher and Printer and the petitioner in W.P.No.27765 of 2012 was the Editor of the Daily newspaper "The Hindu" when the alleged defamatory article was published. The newspaper published the press statement on 01.08.2012

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given by Mr.Vijayakanth, who was the then leader of the opposition stating that “Jayalalitha running a Government through statements”. The press statement of Mr.Vijayakanth was also published by other newspapers. Infact, when the defamation complaint against Vijayakanth (A3) was pending before the Sessions Court, the Government revoked G.O.Ms.No.673 dated 04.08.2012 by which earlier sanction for prosecution was granted to the Public prosecutor. The defamation complaint cannot be proceeded against the petitioners by leaving out the actual perpetrator who allegedly made those defamatory statements.

(c) W.P.No.31552 of 2012

The first petitioner was the Editor, Printer and Publisher, the second petitioner was the Associate Editor, the third and fourth petitioners were the reporters of the Bi-weekly Tamil Magazine when the alleged defamatory article was published. The magazine published in its issue dated 2012 July 11th to 13th only an analytical report after conducting a) an interview with a lady who claimed to be the daughter of late Chief Minister and b) an interview with her advocate. Other publications like "Kumudham-Reporter" and "Junior-Vikatan" have also

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published similar news and information in an elaborate manner which is much more inciteful than the petitioner's publication.

(d) W.P.No.31553 of 2012

The first petitioner was the Editor, the second petitioner was the Associate Editor and the third petitioner was the reporter of the Bi-Weekly Tamil Magazine "Nakkeeran" when the alleged defamatory article was published. The magazine in its Bi-weekly issue dated 2012 January 7th to 10th published an article under the heading "Beef eating Brahmin". It is only a report as to how Miss.J. Jayalalitha was projected as a leader by late Mr.M.G.Ramachandran, despite being a brahmin. It is only an appreciative comment of late Mr.M.G.Ramachandran on the non-brahminic attitude of late Chief Minister. There is no connection whatsoever with the public functions and duties of the late Chief Minister.

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(e) W.P.Nos.25377 & 25378 of 2012

The petitioner in W.P.No.25377 of 2012 was the Editor and the petitioner in W.P.No.25378 of 2012 was the Printer and Publisher of the

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newspaper, "Times of India" Chennai edition when the alleged defamatory article was published. The newspaper published on 02.08.2012, an article under the heading "*AS CORPN DIGS PAST, DMK CADRES HIT THE STREETS OVER CHOLERA*". The said article is nothing but a reporting of the protest made by DMK cadres with regard to the outbreak of Cholera in the city. The complaint was also filed on the very next day after issuance of G.O. There is total non-application of mind by the Public Prosecutor.

(f)W.P.No.11624 of 2013

The petitioners have challenged the Criminal Complaint C.C.No.2 of 2013. The first petitioner was the Editor and Printer and the second petitioner was the publisher of the Tamil daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 06.11.2012 a news item under the caption "Special bus for Deepavali to be operated by inexperienced drivers". The case of the prosecution is that the said article defamed Miss. J.Jayalalitha, the then Chief Minister. The article does not say that the Drivers are not qualified or do not have a valid driving license. It only says that the Drivers are inexperienced.

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The reading of the whole article will reveal that the news report was published only after getting inputs from the Transport department.

(g)W.P.No.11625 of 2013

The petitioners have challenged the complaint C.C.No.7 of 2013. The first petitioner was the Editor and the second petitioner was the Publisher of the Tamil Daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 08.11.2012, a news item titled "Interference by Minister's brother blocked the implementation of the Central Government order against Cable TV Operators". The case of the prosecution is that the news report has defamed the Transport Minister Mr.Senthil Balaji. The news item is about issues in Cable TV operations in Karur. Nowhere in the news item, the Minister of Transport has been defamed.

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(h)W.P.No.11626 of 2013

The petitioners have challenged the criminal complaint C.C.No.22 of 2013. The first petitioner was the Editor and Printer and the second

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petitioner was the Publisher of the Tamil Daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 11.02.2013, a news item under the heading "Government information department allocates separate space for AIADMK in Government Website". The case of the prosecution is that the news item has defamed the Director of information and public relations Mr.J.Kumaraguruparan in the discharge of his public function. The news item carries the information about the Government website "www.tndipr.gov.in" and alleges that separate space were given to AIADMK to post the happenings in the party. The said news item was published for pubilc good without malice.

(i)W.P.No.11627 of 2013

The petitioners have challenged the criminal complaint C.C.No.10 of 2013. The first petitioner was the Editor and printer and the second petitioner was the publisher of the Tamil Daily " Dinamalar" when the alleged defamatory article was published. The newspaper published on 10.11.2012, a news item which carried the news regarding the electricity generated in sugar mills. The case of the prosecution is that the said

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news item has defamed Thiru. Natham R.Viswanathan, the Minister for Electricity, Prohibition and Excise and TANGEDCO. The news item carries the news collected by the reporter regarding the electricity generated in sugar mills and the same has been published for public good without any malice.

(j)W.P.No.11628 of 2013

The petitioners have challenged the criminal complaint C.C.No.11 of 2013. The first petitioner was the Editor and Printer and the second petitioner was the Publisher of the Tamil Daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 07.11.2012 an article stating that the Co-optex employees have stated that only due to the admonition of the Minister Dr.S.Sundaraj, an employee by named Kothanayaki died. The case of the prosecution is that the news report has defamed Dr.S.Sundarajan, Minister for Handloom and Textiles in the discharge of his public functions. The news item carries the news collected by the reporter and no part of the report is defamatory as there is no malice involved.

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(k) W.P.Nos.4860 & 4861 of 2012

The petitioner is the Editor, Printer and Publisher of the newspaper "Tamil Murasu" in both the above writ petitions. "Tamil Murasu" published the press statement on 02.12.2011 given by M.K.Stalin, MLA with regard to the contents of his complaint which he had lodged against the then Chief Minister on 02.12.2011 with the DGP Office requesting to take appropriate action by registering an FIR against the then Chief Minister for land grabbing at Kodanad and Siruthaavur. There was no opinion of the petitioner in the said publication nor any innuendo published.

(l) W.P.Nos.23679 & 25296 of 2012

The petitioner in both the above writ petitions was the Publisher, Printer and Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. G.O.No.709 dated 08.08.2012 sanctioning prosecution was challenged in W.P.No.23679 of 2012 and the consequent complaint C.C.No.14 of 2012 was challenged in W.P.No. 25296 of 2012. The Tamil Daily published on 30.07.2012 under the heading "Kazhaignar replies" an interview conducted by a reporter with

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Mr.Karunanidhi, the former Chief Minister on the continuous absence of Miss.J.Jayalalitha, the then Chief Minister in Chennai for two months and staying in an unknown place. The petitioner has not authored the report and hence, the petitioner cannot be attributed with ciriminal defamation for publishing.

(m) W.P.Nos.23680 & 25297 of 2012

The petitioner in both the above Writ petitions was the Publisher, Printer and Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. G.O.No.716 dated 14.08.2012 sanctioning prosecution was challenged in W.P.No.23680 of 2012 and the consequent complaint C.C.No.16 of 2012 was challenged in W.P.No.25297 of 2012. The Tamil Daily published on 09.08.2012, a statement made by Mr.M.K.Stalin, M.L.A about the reckless filing of false cases against the opponents by Miss. J.Jayalalitha for raising the issue of her continuous absence at Chennai for several months and staying at Kodanadu. The news item published is only the statement of other people and not authored by the petitioner and hence, there is no mensrea or criminal intent on the part of the petitioner.

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(n) W.P.No.33290 of 2012

The petitioner has challenged G.O.No.874 dated 12.10.2012. The petitioner was the Publisher, Printer and Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 23.08.2012 an interview by their reporter with Mr.Karunanidhi, the former Chief Minister. Mr.Karunanidhi is reportedly to have said in the interview that files are getting cleared from the Ministers through their representatives. The newspaper has only published the interview and the statements made in the interview are not authored by the newspaper.

(o)W.P.No.33291 of 2012

The petitioner has challenged G.O.Ms.No.954 dated 06.11.2012. The petitioner was the Publisher, Printer and Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 23.08.2012 an interview with Mr.M.Karunanidhi, the former Chief Minister under the caption "Kalaignar replies". The case of the prosecution is that the news item willl harm the reputation of the Minister of Labour, Thiru.S.T.Chellapadian, in the discharge of his public

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functions. The newspaper has only published the interview and the statements made in the interview are not authored by the newspaper.

(p)W.P.No.32392 of 2012

The petitioner has challenged G.O.Ms.No.840 dated 03.10.2012. The petitioner was the Editor, Printer and Publisher of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 23.08.2012 an interview with Mr.Karunanidhi, former Chief Minister under the caption "Kalaignar replies". The case of the prosecution is that the news item has harmed the reputation of Thiru K.T.Pachamal, who was the Minister of Forest at that time in the discharge of his public functions. The newspaper has only published the contents of the interview and the statements made in the interview are not authored by the newspaper.

(q) W.P.No.32393 of 2012

The petitioner has challenged G.O.Ms.No.927 dated 25.10.2012 sanctioning prosecution. The petitioner was the Editor, Printer and Publisher of the Tamil Daily "Murasoli" when the alleged defamatory

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article was published. The newspaper published on 23.08.2012 an interview with Mr.Karunanidhi, former Chief Minister under the caption "Kalaignar replies". The case of the prosecution is that the news item has harmed the reputation of Mr.O.Panneerselvam, the then Finance Minister, Government of Tamil Nadu in the discharge of his public functions. The newspaper has only published the contents of the interview and the statements made in the interview are not authored by the newspaper.

(r) W.P.No.32394 of 2012

The petitioner has challenged G.O.No.839 dated 03.10.2012 sanctioning the prosecution. The petitioner was the Publisher, Printer and Editor of the Tamil Daily "Murasoli", when the alleged defamatory article was published. The newspaper published an interview with Thiru. Karunanidhi, former Chief Minister with regard to the report which appeared in another tamil Magazine "Anandha Vikatan" regarding the lining up of the Ministers before Ms.J.Jayalalitha, the Chief Minister showing their respects to her at the Secretariat. The newspaper has only published the interview and the statement made in the interview is not

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authored by the newspaper. The case of the prosecution is that the news item will harm the reputation of Mnister for School Education, Sports and Youth Welfare, Mr.N.R.Sivapathy in the discharge of his public functions.

(s)W.P.No.33218 of 2013

The petitioner was the Publisher, Printer and Editor of Tamil Daily "Murasoli" when the defamatory article was published. The newspaper published an article on 01.08.2012 under the heading "AIADMK Government to make it work needs a meeting condemning its Governance." The article claims that the Government has not taken any action on the complaint given and instead of taking action, the Government is making statements and challenging the opposition. The news items published are only transmitted from other people and are the views of the public and not the personal views of the publisher. The petitioner has challenged G.O.Ms.No.757 dated 03.09.2013 sanctioning prosecution.

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(t) W.P.No.23681 of 2012

The petitioner has challenged G.O.Ms.No.457 dated 21.05.2012 sanctioning prosecution. The petitioner was the Printer, Publisher and

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Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 20.05.2012 an article under the caption "Jayalalitha sand mafia committing atrocities. Officials and public hand in glove." The case of the prosecution is that the article will harm the reputation of Miss.J.Jayalalitha, the then Chief minister in the discharge of her public functions. The newspaper has only published the article believing the same to be true.

(u) W.P.Nos.11727 & 11728 of 2013

The petitioner in both the above writ petitions is the Editor, Printer & Publisher of the Daily newspaper "Dinakaran". G.O.Ms.No.120 dated 04.02.2013 sanctioning prosecution was challenged in W.P.No.11727 of 2013 and the consequent complaint C.C.No.14 of 2013 was challenged in W.P.No.11728 of 2013. "Dinakaran" published the press statement on 31.01.2013 given by one Vijayakanth MLA, Leader of DMDK, the then leader of opposition, wherein he had stated that the Chief Minister had used the film industry to climb up to the present status but now has completely forgotten the past which helped her to grow up in the ladder. The said press statement was published in the

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Dinakaran daily as given by the said Vijayakanth without any addition or deletion and without publishing the paper's own views and without any innuendo.

8. Authorities cited on the side of the Petitioners:

(a) ***Pepsi Foods LTD and Another Vs Special Judicial Magistrate and others*** reported in ***(1998) 5 SCC 749***

(b) ***Subramanian Swamy -Vs- Union of India*** reported in ***(2016)7 SCC 221***

(c) ***R. Rajagopal vs State of Tamil Nadu*** reported in ***1994 6 SCC 632,***

(d) ***Barium Chemicals Ltd Vs A.J.Rana*** reported in ***(1972 (1) SCC 240)***

(e) ***Kartar Singh vs. State of Punjab*** reported in ***AIR 1956 SC 541***

(f) ***K.K. Mishra Vs State of Madhya Pradesh*** reported in ***2018 L.W. (Cri) 17***

(g) ***Union of India vs. Naveen Jindal*** reported in ***(2004) 2 SCC 510***

(h) ***State of Andhra Pradesh vs. P.Laxmi Devi*** reported in ***(2008)***

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(i) ***S.Khushboo vs. Kanniammal and Another*** reported in ***(2010) 5 SCC 600***

(j) ***Shreya Singhal vs. Union of India*** reported in ***(2015) 5 SCC 1***

(k) Hon'ble Mr. Justice Deepak Gupta's speech on "Freedom of Speech" at a lecture organised by the Supreme Court Bar Association.

(l) Hon'ble Mr. Justice Chandrachud's recent speech at Justice P.D.Desai Memorial Lecture.

(m) R.Avudayappan Vs. Muthukaruppan, Public Prosecutor in Crl.OP (MD). No. 21494 of 2013 reported in MANU/TN/3825/2018 - Order by G.R.Swaminathan J of Madras High Court.

(n) V.P.R.Ilamparuthi Vs. Public Prosecutor in Crl.OP (MD).No.22263 of 2013 reported in Law Finder Doc Id No.1128438 - Order by G.R.Swaminathan, J of Madras High Court.

(o) Karur Murali & Ors. Vs. Public Prosecutor - reported in 2018(4) MLJ (Criminal) 578 - Order by N.Anand Venkatesh J of Madras High Court.

(p) Cyrus Broacha of CNN-IBN TV Channel Vs. The City Public Prosecutor - reported in CDJ 2020 MHC 438 - Order by M.Dhandapani, J of the Madras High Court.

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(q) Bairam Muralidhar Vs. State of AP reported in [(2014) 10 SCC 380]

9. SUBMISSIONS OF THE GOVERNMENT

(a)The order according sanction to the City Public Prosecutor is passed by the Authority in accordance with statutory mandate and cannot be said that the sanctioning authority acted acrimoniously. Therefore, the validity of the sanction accorded cannot be tested by way of filing a writ petition treating the same as an administrative order.

(b) Assuming but not admitting that the Court could test in the Writ Petition the validity of the accord of sanction, the same can be done only if there is a grave abuse of power or a clear breach. Thus, interference could be done only if the sanction is an acrimonious exercise and accorded in the absence of any materials placed or available or passed without consideration of the same.

(c) The application of mind by the Sanctioning Authority need not be exhibited in the Order. At the time of testing of the Order of sanction the probability of the result of the complaint ending in acquittal cannot be considered. The contents of the articles or the speech or publications

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cannot be analyzed or an exercise be undertaken.

(d) The decision referred to and relied by the Petitioners in W.P. No. 25298 of 2012 does not decide the issue of maintainability of the Writ Petition. The said decision follows the decision of this Hon'ble Court in Crl. O.P. No. 14677 of 2017 dated 08.02.2018. In the decision in Crl. O.P. No. 14677 of 2017, the issue whether the remarks amounted to public criticism or would amount to personal defamation was decided in the facts of that case. The same cannot be applied to these Writ Petitioners cases.

(e) The Orders challenged in the Writ Petitions clearly exhibits application of mind and reasons for coming to the conclusion that the statements in the article/publication has reasonable nexus with the discharge of official duties and aimed with defaming the name, fame of the constitutional functionaries.

(f) In the affidavits filed in support of the writ petitions, there is no averment of abuse of power or that the order of sanction is a result of acrimony.

(g) Subsequent to the accord of sanction, the Public Prosecutor has preferred complaint and the Learned Sessions Judge after application of

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mind has taken on file the complaint for offence under Sec. 499 and Sec. 500 of IPC. Hence, Writ Petitions challenging accord and sanction is not maintainable.

(h) None of the circumstances enumerated in the decision of state of **Haryana and others vs Bhajan Lal and others** reported in **1992 Supp 1 SCC 335** have been made out for quashing of the Government Orders as well as the complaints.

10. Authorities relied upon by the Government

(a) **Prakash Singh Badhal and another Vs. State of Punjab** *reported in* **(2007) 1 SCC 1.**

(b) ***DineshKumar Vs. Chairman, Airport Authority of India and another*** reported in ***(2012) 1 SCC 532***

(c) ***The State of Karnataka Vs Ameerjan*** reported in ***(2007) 11 SCC 273***

(d) ***Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*** reported in ***(1997) 7 SCC 622.***

(e) ***Municipal Council, Neemuch Vs. Mahadeo Real Estate and Others*** reported in ***(2019) 10 SCC 738.***

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(f) ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 Supp 1 SCC 335*** .

DISCUSSION:

11. In order to get answers to the questions raised in these batch of writ petitions, we need to examine and analyze the following:

A. Chapter XXI of the Indian Penal Code which deals with Criminal defamation and comprises of sections 499 to 502.

B. Relevant decisions of the Hon'ble Supreme Court and other High courts on the substantive and procedural aspects of Criminal defamation law.

C. Criminal defamation law in other major Democracies as well as the UN Convention on Tolerance, 1995.

D. Opinion of jurists on Freedom of speech and expression under article 19 (1) of the Constitution of India.

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12. Chapter XXI of the Indian Penal Code deals with Criminal defamation law and comprises of 4 sections namely sections 499 to 502. Section 499 is the charging section for criminal defamation. Section 500

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is the punishment section for criminal defamation. Section 501 is the charging and punishment section for printing or engraving matter known to be defamatory and section 502 is the charging and punishment section for sale of printed or engraved a substance containing defamatory matter. Therefore only when the alleged defamatory act comes within the definition of section 499 IPC, sections 500 to 502 gets attracted.

13. We shall now examine and analyze the pedestal section of Chapter XXI of IPC namely section 499 which is the definition section. Section 499 defines defamation as:

> *"Whenever, 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 to defame that person."*

Therefore the essence of criminal defamation is that the person charged for the said offence must have the intention to harm the reputation of the person against whom words have been spoken or any article has been published by him.

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14. Section 499 provides for 10 exceptions which are as follows:

a) Imputation of truth which public good requires to be made or published.

b) Public conduct of public servants.

c) Conduct of any person touching any public question.

d) Publication of reports of proceedings of courts.

e) Merits of a case decided in court or conduct of witnesses and others concerned.

f) Merits of public performance.

g) Censure passed in good faith by person having lawful authority over another.

h) Imputation made in good faith by person for protection of his or others' interests.

i) Caution intended for the good of person to whom conveyed or for public good.

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15. Section 500 is the punishment section for criminal defamation. The section provides that the punishment for criminal defamation is

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simple imprisonment for a term which may extend to 2 years, or with fine, or with both.

16. Section 501 deals with the offence of criminal defamation relating to printing or engraving matter known to be defamatory. The punishment for the said offence is the same as that of section 500 IPC.

17. Section 502 deals with the offence of criminal defamation relating to sale of printed or engraved substance containing defamatory matter. The punishment for this offence is also the same as that of section 500 IPC.

18. The offence of criminal defamation is a non-cognizable offence under the Criminal Procedure Code. Criminal defamation is the only non-cognizable offence in the entire Indian Penal Code having a large number of exceptions to the offence. This will indicate that the intention of the legislature is to restrict the usage of the criminal defamation law.

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19. In all these batch of writ petitions, the petitioners are newspapers and they have pleaded either a) truth b) not the author of the article c) good faith d) public good e) public conduct f) conduct touching public question in the articles published. Some of them have pleaded all the above exceptions and some a few of them.

20. Section 199 of the criminal Procedure Code prescribes the procedure for prosecuting criminal defamation offences. There are six subsections in section 199 and each of them are itself unique in its application.

(a) Subsection 1 provides that only an aggrieved person can launch prosecution for criminal defamation.

(b) Subsection 2 provides for a special procedure in cases where the imputation is made against the constitutional functionary/public servant in respect of his conduct in the discharge of his public functions. This special procedure provides for filing of a complaint through a public prosecutor before the sessions court.

(c) Subsection 3 narrates the facts which are required to be pleaded in a complaint filed for criminal defamation under section 199(2)

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Cr.P.C. through a public prosecutor. It states that the complaint shall set forth in the facts which constitutes the offence alleged, the nature of such offence and such other particulars as our reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him. It is to be noted here that for no other non-cognizable offence in the entire Penal Code, there is a stipulation about the factual requirements that are to be pleaded in a private complaint for Criminal defamation filed under Section 199(2).

(d) Subsection 4 provides that for filing a complaint by the public prosecutor under subsection 2, sanction of the State Government or the Central Government as the case may be is mandatory.

(e) Subsection 5 prescribes six months time limit for launching prosecution through a public prosecutor under subsection 2.

(f) Subsection 6 is an omnibus provision enabling any aggrieved person including public servant/constitutional functionary to launch prosecution for criminal defamation before the Magistrate dehors the special procedure available under subsection 2 in cases of imputation made against a constitutional functionary/public servant to his conduct in the discharge of his public functions. It must be noted here that the

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punishment provided for criminal defamation under the Indian Penal Code is same whether the prosecution is launched through the public prosecutor in the court of Sessions under section 199 (2) Cr.P.C. or by the aggrieved personally under section 199(6) Cr.P.C. before the Magistrate.

21. Section 199(2) Cr.P.C. also does not bar a constitutional functionary/public servant from personally launching prosecution for criminal defamation before the Magistrate under section 199(6) Cr.P.C. even in cases of defamation in respect of his conduct in the discharge of his public functions. The intention of the legislature would never have been to overlap the applicability of subsections within a section. The rule of harmonious construction comes into play. The rule falls on the premise that every statute/section has a purpose of intent as per law and should be meaningful. The rule of Harmonious construction is the thumb rule while interpreting any statute. The interpretation which makes the enactment consistent and the interpretation which avoids inconsistency or repugnancy should be the aim of the courts. Therefore there is an intelligible differentia between subsection (2) and subsection (6) of

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section 199. Subsection (2) is the procedure for launching prosecution in case of defamation against the State and subsection (6) is for personal defamation even if it is a case of defamation against a public servant/constitutional functionary in the discharge of his public functions which are personal in nature and where state has not been defamed. Public servant/constitutional authority is required to do selfless service to the State. The Legislature would never have intended to launch prosecution through a Public Prosecutor to serve the personal interest of the public servant/constitutional authority alone, even if the said defamation of the public servant/constitutional authority was made in the discharge of his / her public functions. Unless, the element of the State also being defamed along with the public servant/constitutional authority is satisfied, the question of launching prosecution through the public prosecutor under Section 199(2) Cr.P.C will never arise as it involves a special procedure for criminal defamation against the State. The subtle difference between Section 199(2) and 199(6) Cr.P.C is also supported by decisions of the Honourable Supreme Court which will be discussed by this court in the forthcoming paragraphs of this common Order.

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22. Section 24 of the Code of Criminal Procedure provides for appointment of public prosecutors. Public prosecutors are appointed by the State or Central Government as the case may be to conduct in the court any prosecution, appeal or other proceeding on behalf of the Central Government or State Government as the case may be. As seen from section 24, a public prosecutor can represent only the interest of the State/Central Government and not any other person though he may be a constitutional functionary/public servant. It must be noted here that under section 199 (2) Cr.P.C., prosecution is launched through a public prosecutor and hence, it has to be examined and analyzed as to whether for a public prosecutor to file a complaint is it sufficient if the criminal defamation has been committed against the constitutional functionary/public servant in respect of his conduct in the discharge of his public functions or in addition to that requirement whether the state should also have been defamed. The decisions of the Honourable Supreme Court and the reasonings of this court to be narrated in the forthcoming paragraphs will shed light and give answers to these questions.

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23. Under section 200 Cr.P.C, a Magistrate taking cognizance of a complaint will have to examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced into writing and shall be signed by the complainant and the witnesses and also by the Magistrate. The exception to this procedure of examining the complainant and witnesses is when the complainant is a public servant acting or purporting to act in the discharge of his public duties or a court has made the complaint; or if the Magistrate makes over the case for enquiry or trial to another magistrate under section 192 Cr.P.C. Therefore before taking cognizance of a private complaint under section 200 Cr.P.C., it is mandatory to examine the complainant and the witnesses present on oath. A complaint for criminal defamation filed through a public prosecutor under section 199(2) Cr.P.C. is also a private complaint though filed before the Sessions Court.

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24. The proviso (a) to section 200 Cr.P.C. grants exemption only to a public servant acting or purporting to act in the discharge of his official duties and does not grant exemption to a public prosecutor to be

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examined by a Magistrate before taking cognizance of a complaint for criminal defamation filed under section 199(2) Cr.P.C. Further, as hled by the Hon'ble Supreme Court in the case of State of ***U.P and others vs. Johri Mal***, reported in ***(2004) 4 SCC 714*** in paragraph 39 that Public prosecutors retain the character of legal practitioners for all intent and purport. They of course, discharge public functions and certain statutory powers are also conferred on them. Their duties and function are onerous but the same would not mean that their condition of appointment are governed by any statute or statutory rule. Therefore, in the considered view of this Court, by holding the post of public prosecutors, they cannot be exempted from giving evidence. As independent application of mind is required by the public prosecutor, his examination as a witness can never be dispensed with. None of the subsections in section 199 Cr.P.C. also exempts the public prosecutor from being examined as mandatorily required under section 200 Cr.P.C. When the Criminal Procedure Code makes it mandatory to examine the complainant on oath for a regular private complaint under section 200, the same mandatory requirement for a prosecution for criminal defamation launched through a public prosecutor under section 199(2)

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Cr.P.C. has to be necessarily applied as the level of scrutiny by the Sessions Court is much higher in case of complaints filed for criminal defamation through the public prosecutor under section 199 (2) Cr.P.C. Though the procedure for prosecution in Section 200 Cr.P.C talks about only Private Complaints before Magistrates, the procedure for examination of Complainant contemplated in Section 200 Cr.P.C. will also have to be necessarily imported for Complaints filed under Section 199(2) Cr.P.C. before the Sessions Court, where the level of scrutiny is much higher.

25. Having examined the relevant provisions under the Indian Penal Code and the Criminal Procedure Code, this Court shall now consider the decisions of the Honourable Supreme Court on

a) the law of Criminal Defamation

b) Role of the public prosecutor and his duties.

c) Duties of the Magistrate /Sessions judge while taking cognizance of a private complaint.

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26. The Hon'ble Supreme Court in the case of ***Subramanian***

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Swamy Vs Union of India reported in ***(2016) 7 SCC 221*** though rejecting the challenge to the constitutional validity of criminal defamation law has however laid down the required parameters to launch prosecution for criminal defamation under section 499 IPC. The well laid down parameters are as follows:

a) To constitute the offence of Defamation under section 499 IPC, there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of a person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and Mens rea is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The Criminal offence emphasizes on the intention of the harm. Section 44 of the IPC defines injury. It denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. Thus, the word injury encapsulates harm caused to the reputation of any person. It also takes into account the harm caused to a person's body and

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mind. Section 499 provides for harm caused to the reputation of a person, that is, the complainant.(Para 168)

b) In the name of freedom of speech and expression, the right of another cannot be jeopardized. Therefore, what is required is sustenance and balancing of the separate rights, one under Article 19 (1) (a) and the other under Article 21. It is not a case of mere better enjoyment of another freedom. Balancing equipoise and counterweighing fundamental rights is a constitutional necessity. It is the duty of the court to strike a balance so that the values are sustained.(Paras 144,136 &137).

c) A studied scrutiny of the provisions makes it clear that a public servant is entitled to file a complaint through the public prosecutor in respect of his conduct in discharge of his public functions. Public function stands on a different footing than the private activities of a public servant. The provision gives protection for their official acts. There cannot be defamatory attacks on them because of discharge of their due functions. In that sense, they constitute a different class. Be it clarified here that criticism is different than defamation. One is bound to tolerate criticism, dissent and discordance but not expected to tolerate

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defamatory attack.(Para 202)

d) The provision relating to engagement of the public prosecutor in defamation cases in respect of the said authorities is seriously criticised on the ground that it allows unnecessary room to the authorities mentioned therein and the public servants to utilize the public prosecutor to espouse their cause for vengeance. Once it is held that the public servants constitute a different class in respect of the conduct pertaining to their discharge of duties and functions, the engagement of public prosecutor cannot be found fault with. It is ordinarily expected that the public prosecutor has a duty to scan the materials on the basis of which a complaint for defamation is to be filed. He has a duty towards the court. This court in by **Bairam Muralidhar Vs State of A.P** reported in (2014) 10 SCC 380 while deliberating on section 321 Cr.P.C. has opined that the public prosecutor cannot act like a post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion. It further observed that he cannot remain oblivious to his lawful obligations under the Code and is required to constantly remember his duty to the court as well as his duty to the collective. While filing cases under section 499 and 500

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IPC, he is expected to maintain the independence and not act as a machine.(Para 203)

e) Another aspect required to be addressed pertains to the issue of summons. Section 199 Cr.P.C. envisages filing of a complaint in a court. In case of criminal defamation, neither can any FIR be filed nor can any direction be issued under section 156(3) Cr.P.C. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in ***Rajendra Nath Mahato Vs T Ganguly*** reported in ***1972 1 SCC 450***, is a matter of judicial determination and before issuing process, the Magistrate has to examine the complainant. In ***Punjab National Bank vs Surendra Prasad Sinha*** reported in ***1993 Supp (1) SCC 499***, it has been held that judicial process should not be an instrument of oppression or needless harassment. The court, though in a different context has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law

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casts liability or creates offence against the juristic person or the persons impleaded, then only process should be issued. At that stage, the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of the private complainant as a vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime object of criminal justice but it would not be the means to wreck personal vengeance. In ***Pepsi foods limited Vs Special Judicial Magistrate*** reported in ***(1998) 5 SCC 749***, a two Judge bench of the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. (Para 207).

f) Heavy burden is on the Magistrate to scrutinize the complaint from all aspects. The Magistrate has also to keep in view the language employed in section 202 Cr.P.C. which stipulates about the residence of the accused at the place beyond the area in which the Magistrate exercises his jurisdiction. He must be satisfied that ingredients of section 499 Cr.P.C. are satisfied. Application of mind in the case of a private

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complaint is imperative.(Para 208)

g) It will be open to the petitioner to challenge the issue of summons before the High Court either under Article 226 of the Constitution of India or under section 482 Cr.P.C. as advised and seek appropriate relief.(Para 210).

27.The Hon'ble Supreme Court while considering another case involving criminal defamation in the case of ***J. Khushboo vs Kanniammal and another*** reported in ***2010 5 SCC 600*** held as follows:

a) The framers of our Constitution recognized the importance of safeguarding the freedom of speech and expression, since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a precondition for meaningful governance in the political sense, a culture of open dialogue must also be promoted when it comes to social attitudes. (Para 45)

b) If the complainants vehemently disagreed with the Appellants views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effect on the freedom of speech and expression.

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Dissemination of news and views for popular consumption is permissible under our constitutional scheme. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author. (Paragraphs 47, 50 and 45)

c) There is no prima facie case of defamation in the present case. There was neither any intent on the part of the Appellant to cause harm to the reputation of the complainants as contemplated by section 499 IPC nor can one discern any actual harm done to the reputation. In short, both the elements of Mens Rea and Actus Reus are missing.(Paras 34 and 35)

d) The limitation and the power to take cognizance of Defamation under section 199 Cr.P.C. serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate Courts. In the given facts of the present case, the complainants cannot be properly described as persons aggrieved within the meaning of section 199(1) Cr.P.C. as there was no specific legal injury caused to any of them. (Para 35)

e) Thus, it has to be held that the institution of the numerous

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Criminal complaints against the Appellant was done in malafide manner. In order to prevent the abuse of the criminal law machinery, it would be appropriate to grant the relief sought by the Appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the "freedom of speech and expression" is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that the Magistrates can proceed to take cognizance of the same. (Para 44).

28.The Hon'ble Supreme Court in paragraph 614 of its judgment in the case of ***Express Newspapers vs Union of India*** reported in ***AIR 1974 SC 678*** held that "Freedom of Expression" includes the freedom to proliferate one's own views as well as of others.

29. In ***Gopal Das vs DM*** reported in ***AIR 1974 SC 213***, the Hon'ble

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Supreme Court held that the freedom of press includes printing of Editors or Authors views but also the views of any other people who have printed the views under the directions of the editor, author or the publisher.

30. In ***Bennett Coleman vs State of Jammu and Kashmir*** reported in ***(1975) CRI LJ 211***, the Hon'ble Supreme Court held that the right to comment on public affairs includes the right to criticize people holding public post and also to criticize the public policies.

31. In the pathbreaking judgment in the field of freedom of speech and expression, the Hon'ble Supreme Court in the case of ***Shreya Singhal vs Union of India*** reported in ***AR 2015 SC 1523*** while striking down section 66 A of the Information Technology Act on the ground that it violated the right of freedom of expression guaranteed under Article 19 (1)(a) of the Constitution held that section 66 A of the Information Technology Act leaves many terms open-ended and undefined, therefore making the provision of the statute void for vagueness. The Hon'ble Supreme Court held that the provision fails to define terms, such as "inconvenience or annoyance" in which case a very large amount of protected and innocent speech could be curtailed.(Para 83) Hon'ble RF

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Nariman J stated that any law seeking to impose a restriction on the freedom of speech can only pass muster if it is proximately related to any of the 8 subject matters set out in Article 19(2).

32. The latest decision of the Hon'ble Supreme Court in the case of ***K.K.Mishra vs State of Madhya Pradesh*** reported in ***(2018) 6 SCC 676*** has cleared the doubts conclusively as to when Section 199(2) Cr.P.C. can be invoked through a Public Prosecutor for launching prosecution for criminal defamation. The Hon'ble Supreme Court followed its earlier decision in the case of ***PC Joshi and another vs The State of Uttar Pradesh*** reported in ***AIR 1961 SC 387*** and held as follows:

a) Section 199(2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the functionary or public servant concerned, as the case may be. The prosecution under section 199(2) Cr.P.C. is required to be initiated by the public prosecutor on receipt of a previous sanction of the competent authority in the State/Central Government under section 199(4) of the

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code. Such a Complaint is required to be filed in a Court of Sessions which is alone vested with the jurisdiction to hear and try the alleged offence even without the case being committed to the said court by a subordinate court. Section 199(2) Cr.P.C. read with section 199(4)Cr.P.C., therefore envisages a departure from the normal rule of initiation of a Complaint before the Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in subsection (2) of section 199 Cr.P.C. by subsection(6) thereof.

b) The rationale for the departure from the normal rule has been elaborately dealt with by the Hon'ble Supreme Court in a judgment of considerable vintage in ***PC Joshi and another vs The state of Uttar Pradesh*** reported in ***AIR 1961 SC 387***. The core reason which the Court held to be rationale for the special procedure engrafted by Section 199(2) Cr.P.C. is that the offence of defamation committed against the functionaries mentioned therein is really an offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special

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procedure.

c) PC Joshi case (supra), however, specifically dealt with the provisions of section 198B of the Code of Criminal Procedure, 1898("Old Code") which are Pari Materia with the provisions of section 199 of the Cr.P.C. ("New code"). Section 199(2) and 199(4) Cr.P.C. provides an inbuilt safeguard which require the public prosecutor to scan and be satisfied with the materials on the basis of which a complaint for defamation is to be filed by him acting as the public prosecutor. Public prosecutor filing a complaint under section 199 (2) Cr.P.C. without due satisfaction that the materials/allegations in complaint discloses an offence against an authority or against public functionary which adversely affects the interest of the State would be abhorrent to the principles on the basis of which the special provision under section 199(2) and 199(4) Cr.P.C. has been structured as held by this Court in PC Joshi (supra)and Subramanian Swamy (supra). The public prosecutor in terms of the statutory scheme under the Criminal Procedure Code plays an important role. He is supposed to be an independent person and apply his mind to the materials placed before him

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33. The facts of the case in ***KK Mishra*** referred to supra was that the accused allegedly committed offence of defamation against the Chief Minister of the State on account of certain statements with regard to the Chief Minister in course of a press conference that he addressed as Chief spokesperson of a political party. The statements made by the accused are as follows:

> *"19 amongst the transport inspectors appointed in Madhya Pradesh are from the in-laws house Gondiya (Maharashtra) of Chief Minister Shiv Raj Singh Chauhan. Conversation has been made with the accused persons of the Vyapam Scam from the mobile of Sanjay Chauhan, son of Phoolsingh Chauhan-Mama of the Chief Minister Shri Shiv Raj Singh Chauhan. Conversation has been made from the Chief Minister's house by an influential woman through 139 phone calls with the accused of Vyapam scam Nitin Mahendra, Pankaj Trivedi, Lakshmikant Sharma."*

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34. The Hon'ble Supreme Court held that none of the alleged defamatory statements, in respect of which sanction was accorded to the public prosecutor to file complaint under section 199 (2) Cr.P.C., even if

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admitted to have been made by the accused can be said to have any reasonable connection with discharge of public duties by or the office of the Chief Minister. The alleged statements like appointment of persons from area/place to which the wife of the Chief minister belongs and making of phone calls by a relation of Chief Minister, have no reasonable nexus with the discharge of public duties by or office of the Chief Minister. Such statements may be defamatory but in absence of a nexus between the same and the discharge of public duties of office, remedy under section 199(2)and 199(4) will not be available. It is the remedy saved by the provisions of subsection(6) of section 199 Cr.P.C. i.e. a complaint by the Chief minister before the ordinary court i.e. the court of a Magistrate which would be available and could have been resorted to.

35. The Madras High Court in the decisions relied upon by the respective learned counsels for the petitioners has followed K.K Mishra's case and quashed the criminal complaints filed for criminal defamation excepting for one case where the Learned Judge felt that as to whether the imputation was made against the Public Servant/constitutional

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functionary about his conduct in the discharge of public functions or not can be tested only after Trial.

36. The Punjab and Haryana High Court in the case of ***Ashwini Kumar vs Subash Goyal*** reported in ***MANU/PH/1170/2013*** while dealing with a case of Criminal defamation under section 499 IPC quashed the complaint and held as follows:

> *" The attempt to curb the freedom of speech, the freedom of press and the power of the pen therefore, needs to be discouraged and rather, complaints such as these ordinarily should be viewed as attempts of a prudish mind of the complainant's orchestrator showing complete sub-versiveness and servility of character, and displaying an aversion to criticism over preference to a parroted existence.(Para 19)."*

37. In another oft quoted decision of the Hon'ble Supreme Court on "freedom of speech" is the case of ***Kartar Singh vs State of Punjab*** reported in ***AIR 1956 SC 541*** wherein the Apex Court held that vulgar abuses made against the Transport Minister and the Chief Minister will

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not amount to defamation of the State but may amount only to the defamation of the public functionaries concerned and therefore, they are only personal in nature. The facts of that case are that the accused was charged under section 9 of the Punjab security of the State Act, 1953 for making vulgar abuses against the Transport Minister and the Chief Minister. Section 9 reads as follows:

> *"whoever*
>
> *(a)makes any speech or*
>
> *(b) " by words, whether spoken or written or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report, shall, if such speech, statement, rumour or report undermines the security of the State, friendly relations with foreign States, public order, decency, morality, or amounts to Contempt of court, or defamation or incitement to an offence prejudicial to the security of the state or the maintenance of public order, or tends to overthrow the state, be punishable with imprisonment which may extend to 3 years or with fine or with both."*

The Hon'ble Supreme Court even though finding that the accused statements amounted to defamation against the Transport Minister and the Chief Minister however held that the vulgar abuses do not undermine

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the security of the state or friendly relations with foreign states nor did they amount to contempt of court or defamation prejudicial to overthrow the state. The Apex court held that the slogans were certainly defamatory of the Transport Minister and the Chief Minister, but the redress of that grievance was personal to these individuals and the state authorities could not take the cudgels on their behalf.

38. While dealing with the role of a Public prosecutor, the Hon'ble Supreme Court in the case of ***Bairam Muralidhar vs State of Andhra Pradesh*** reported in ***(2014)10 SCC 380*** held that the public prosecutor cannot act like a post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the public prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the Court as well as his duty to the collective. (Para 18).

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39. Sanction is a condition precedent for the institution of prosecution under section 199(2) Cr.P.C. as in the case of prosecution of a public servant under the Prevention of Corruption Act. The Hon'ble Supreme Court while dealing with sanction under the Prevention of Corruption Act in the case of ***Central Bureau of Investigation vs Ashok Kumar Agarwal*** reported in ***(2014) 14 SCC 295*** in paragraph 7 of the judgment has observed that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. The Hon'ble Supreme Court further held in the same decision that consideration of the material implies application of mind. Therefore, the order of the sanction must ex-facie disclose that the sanctioning authority had considered the evidence and other material placed before it.

40. Having examined and analysed the relevant sections of the Indian Penal Code, Criminal Procedure Code and the judicial precedents in India, this Court shall now deal with the defamation law in other major world democracies. In U.S, the first Amendment of its Constitution

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makes freedom of press a fundamental right. In the landmark decision of the US Supreme Court in the case of ***New York times Co. Vs Sullivan(No.39)***, the US Supreme Court held that a State cannot, under the First and fourteenth Amendment of its Constitution award damages to a public official for defamatory falsehood relating to his official conduct unless he proves "actual malice"-that the statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false. Therefore unless actual malice is established and the publication is reckless, there is no ground for defamation.

41. Coming to Canada, the Supreme Court of Canada in the landmark decision of ***Grant vs Torstar Cor,(2009) 3 SCR 640*** held that "freedom of expression" is not absolute. One limitation on free expression is the law of defamation, which protects a person's reputation from unjustified assault. However, the Court held that the law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to other's reputation. The Supreme Court of Canada held that if the defences available to a

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publisher are too narrowly defined, the result may be "libel chill", undermining freedom of expression and of the press.

42. The law has begun to shift in favour of broader defences for press defendants in Commonwealth jurisdictions, most prominently in England, but also in Australia(Lange vs Atkinson, 1998 3 N.Z.L.R.424(C.A) ("Langevs.Atkinson No.1"); Lange vs.Atkinson,(2000) 3 N.Z.L.R 257(P.C) ("Lange vs. Atkinson No.2"); Lange vs. Atkinson(2000) 3 N.Z.L.R. 385(C.A.) ("Langevs.Atkinson No.3"), and South Africa (Du Plessis vs. De Klerk,1996(3) SA 850 (CC); National Media Ltdvs. Bogoshi, 1998(4) SA 1196(SCA).

43. The House of Lords in the case of ***Derby Shire Country Council vs Times Newspapers Limited & others*** followed Article 10 of the European Convention on human rights to which the United Kingdom has adhered to but which has not been enacted into domestic law. Article 10 gives everyone the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of

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frontiers. However, this Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. Therefore, in the Commonwealth jurisdictions as well, the right to freedom of speech and expression has been treated as a fundamental right.

44. The Charter of the United Nations affirms in its preamble that to practice tolerance is one of the principles to be applied, to attain the ends pursued by the United Nations of preventing war and maintaining peace. In its 1993 session, the UN assembly declared the year 1995 the United Nations year for tolerance. On 16 November 1995, the UNESCO member states in which India is also a member adopted the Declaration of principles on Tolerance that provides a guideline to further strengthen the international principles of tolerance. 16th November 1996 was officially declared the annual International Day of tolerance. India has also recognized 16th November as its National Day of Tolerance. The UN Convention on tolerance, 1995 declared that it is essential for international harmony that individuals, communities and nations accept

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and respect the multicultural character of the human family. The convention declared that without tolerance there can be no peace, and without peace there can be no development or democracy.

45. **Hon'ble Justice Deepak Gupta**, who retired recently as a Supreme Court Judge while delivering a lecture as a Supreme Court Judge on law of sedition in India and freedom of expression on 7th September 2019 said the following:

a) The right to dissent is one of the most important rights guaranteed by our Constitution. As long as a person does not break the law or encourage strife, he has a right to differ from every other citizen and those in power and propagate what he believes is his belief.

b) In the preamble to the Constitution "We the people of India" have promised to secure for all citizens-liberty of thought, expression, belief, faith and worship. This is an inherent human right and a part of the basic structure of the Constitution. There cannot be any democratic polity where the citizens do not have the right to think as they like, express their thoughts, have their own beliefs and faith and worship in a manner which they feel like.

c) What is a general promise in the preamble to the Constitution,

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later becomes an enshrined fundamental right. Article 19(1)(a) guarantees the right of freedom of speech and expression. This right is a well-recognised right which includes within its ambit the right of freedom of press, the right to know, the right to privacy, etc. Article 21 prescribes that no person shall be deprived of his life or personal liberty except according to the procedure prescribed by law.

d) No doubt, the state has the power to impose reasonable restriction on the exercise of such rights in the interest of sovereignty and integrity of the country, the security of the state, friendly relations with foreign states, public order, decency or morality, defamation, etc.

e) The right of freedom of opinion and the right of freedom of conscience by themselves include the extremely important right to disagree. Every society has its own rules and over a period of time where people only stick to the age old rules and inventions, society degenerates. New thinkers are born when they disagree with well accepted norms of society. If everybody follows the well trodden path, no new paths will be created, no new explorations will be done and no new vistas will be found. We are not dealing with vistas and explorations in the material field, but we are dealing with higher issues. If a person

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does not ask questions and does not raise issues questioning age-old systems, no new systems would develop and the horizon of the mind will not expand. Whether it be Buddha, Mahavira, Jesus Christ, Prophet Muhammad, Guru Nanak Dev , Martin Luther King, Raja Ram Mohan Roy, Swami Dayanand Saraswathi, Karl Marx or Mahatma Gandhi, new thoughts and religious practices would not have been established, if they had quickly submitted to the view of their forefathers and had not questioned the existing religious practices, beliefs and rituals.

f) A very important aspect of democracy is that the citizens should have no fear of the Government. They should not be scared of expressing views which may not be liked by those in power. No doubt, the views must be expressed in a civilised manner without inciting violence but mere expression of such views cannot be a crime and should not be held against the citizens. The World would be a much better place to live, if people could express their opinions fearlessly without being scared of prosecutions or trolling on social media.

g) Criticism of the policies of the Government is not sedition unless there is a call for public disorder or incitement to violence. The people in power must develop thick skins. They cannot be oversensitive to people

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who make fun of them. Everybody may not use temperate or civilised language. If intemperate, uncivilised and defamatory language is used, then the remedy for the public functionary is only to launch proceedings either civil or criminal or both for defamation for damaging his/her reputation in his/her individual capacity.

h) Even the judiciary must be open to criticism. The judiciary is not above criticism. If Judges of the superior courts were to take note of all the contemptuous communications received by them, there would be no work other than contempt proceedings. Only if there is criticism, will there be improvement. Not only should there be criticism but there must be introspection. When we introspect, we will find that many decisions taken by us need to be corrected. Criticism of the Executive, the Judiciary, the Bureaucracy or the Armed forces cannot be termed sedition. In case, we attempt to stifle criticism of the institutions whether it be the legislature, the executive or the judiciary or other bodies of the state, we shall become a police state instead of democracy and this the founding fathers never expected this country to be. If this country is to progress not only in the field of commerce and industry but to progress in the field of human rights and be a shining example of an

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effective, vibrant democracy, then the voice of the people can never be stifled.

46. Similarly, **Hon'ble Mr Justice D.Y Chandrachud**, the Sitting Supreme Court Judge while delivering the **Justice P.D.Desai Memorial lecture** recently said that "An essential aspect of any successful democracy is its commitment to the protection of deliberative dialogue. Citizens manifest their equality not only by refraining from interference with the freedom of expression of others; they also do so by sustaining conditions conducive for free communication." His Lordship also said "The attack on dissent strikes at the heart of a dialogue-based Democratic society and hence, the State is required to ensure that it deploys its machinery to protect the freedom of speech and expression within the bounds of law, and to dismantle any attempt to instill fear or curb free speech.

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47. Lee.C.Bollinger in his Book "The Tolerant Society : Freedom of Speech and Extremist Speech in America" says

(a) Free speech is necessary to enlightened Democratic self-

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government because the suppression of information and ideas thwarts the search for truth and impairs a political system's ability to reach the right decisions.

(b) The purpose of the institution of free speech, is not to build a redoubt against intolerance and the intolerant but rather to teach all citizens how to control the impulse towards intolerance in themselves.

(c) Speech is a good area in which to practice self-control because the stakes are lower than in the area of conduct: less harm will be done if we tolerate bad speech than if we tolerate bad actions. But we exercise "extraordinary self restraint towards speech in order to teach ourselves to be more tolerant throughout "the whole tapestry of social intercourse". In particular, if the impulse towards intolerance is not controlled, it can undermine the give-and-take necessary in a democracy.

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48. As a sequitur to the above discussion, the following propositions emerge:

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a) Being a non cognizable offence and considering the fact that there are large number of exceptions provided for, the intention of the

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legislature is to restrict the usage of the criminal defamation law.

b) There is an intelligible differentia between section 199(2) Cr.P.C. and 199(6) Cr.P.C. Only in cases where the State has been defamed and a public servant/constitutional functionary has also been defamed while discharging his public functions, section 199(2) gets attracted and only then, a public prosecutor can launch a prosecution after obtaining prior sanction from the competent authority under section 199(4) Cr.P.C. In all other cases where the ingredients of defamation has been made out, it will fall only under section 199(6) Cr.P.C. and can be filed only before the Magistrate.

c) In cases where the public servant/Constitutional functionary has been defamed while discharging his public functions but the State has not been defamed, section 199(2) is not attracted. The only recourse available to him is to file a complaint before the Magistrate under section 199(6) Cr.P.C.

d) The State must apply its mind to the materials placed on record before granting sanction to the public prosecutor for launching prosecution under section 199(4) Cr.P.C.

e) The public prosecutor must independently assess the materials

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available on record and must independently take a view as to whether the materials available are sufficient to launch prosecution on behalf of the State under section 199(2) Cr.P.C.

f) The complaint filed before the Sessions Court under section 199(2) Cr.P.C. shall set forth in the facts which constitutes the offence alleged more importantly as to how the State has been defamed, the nature of such offence and such other particulars as our reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

g) The level of scrutiny by a Sessions Court under section 199(2) Cr.P.C. is much higher than the scrutiny by a Magistrate under section 199(6) Cr.P.C. Before taking cognizance under section 199(2) Cr.P.C., the Sessions court can even order for further investigation. The Sessions court cannot mechanically take cognizance of the complaint and issue process to the accused. The court will have to independently apply its judicial mind and assess the materials and only if it is satisfied take cognizance of the complaint. The materials assessed shall be indicated by the Sessions Court in its order taking cognizance of the complaint filed under section 199(2) Cr.P.C.

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h) The public prosecutor in a complaint filed under section 199(2) Cr.P.C. shall be examined as a witness and only thereafter the Sessions Court if satisfied with the materials and the complaint can take cognizance and issue process to the accused. The Proviso to Section 200 Cr.P.C. as regards examination of witnesses shall be strictly followed by the Sessions Court.

i) The State should not be impulsive like an ordinary citizen in defamation matters and invoke section 199(2) Cr.P.C. to throttle democracy. Only in cases where there is foolproof material and when launching of prosecution under section 199(2) Cr.P.C. is inevitable, the said procedure can be invoked.

j) Quashing of criminal complaints involving criminal defamation can be done by the High Court exercising its power either under Article 226 of the Constitution of India or under section 482 Cr.P.C.

k) High Court has got the constitutional power to quash Government Orders sanctioning prosecution under section 199(2) Cr.P.C., if the competent authority, without any material as to how the State is defamed, has sanctioned prosecution.

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49. State is like a parent for all citizens in so far as Defamation law is concerned. It is normal for some parents to face vituperative insults from their children. Despite those insults, parents don't disown their children quite easily. They always have the hope that their children will mend themselves in the near future. Only in rarest of rare cases when the character and behaviour of their children is irretrievably broken down and irreconcilable, the parents disown them. The attitude of the State with regard to defamation must also be the same as their tolerance level towards its citizens in so far as defamation is concerned must be akin to that of parents. When the state is having other avenues under law to make the offender realise the mistake if any, the criminal defamation law under section 499 and 500 IPC should be sparingly used by the State. An individual or a public servant/constitutional functionary can be impulsive but not the State which will have to show utmost restraint and maturity in filing criminal defamation cases. If the State becomes an impulsive prosecutor in criminal defamation matters that too in an era of social media where there are scores of abusive contents made against public figures, the Sessions Court will get clogged with innumerable matters which are sometimes vindictive in nature only to settle scores

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with opposition political parties. The intention of the legislature would never have been for this unlawful object.

50. The State must be fully convinced based on the materials that the ingredients of criminal defamation under section 499 IPC have been fully satisfied and the act committed by the alleged offender does not come within any of the many exceptions contained in section 499 IPC. This Court obtained from the registry of this Court statistics of the cases filed under section 199(2) Cr.P.C. through the public prosecutor of Tamil Nadu in the State of Tamilnadu from the year 2012 to 2020 and finds a slew of cases filed totally numbering 226 cases are pending on the file of various Sessions courts till date. Even as seen from these batch of writ petitions, within a short period, the State has filed a slew of Criminal defamation cases. As seen from the data, irrespective of political party who is in power, cases under section 199(2) Cr.P.C. have been filed. In many cases, the High Court has stayed the prosecution. Due to the mechanical filing of complaints under section 199(2) Cr.P.C., the Sessions Courts are sometimes clogged with those matters due to reckless filing

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without application of mind and sometimes vindictively. This menace will have to be curbed and nipped in the bud. The Criminal defamation law is meant for a laudable object in real cases of necessity and cannot be misused by using the State as a tool to settle scores of a public servant/constitutional functionary over his/her adversary. A public servant/constitutional functionary must be able to face criticism. As public servants/constitutional functionaries, they owe a solemn duty to the people. The state cannot use criminal defamation cases to throttle democracy.

51. In criminal defamation cases, police cannot register FIR under section 499 IPC against the accused. Only through a complaint under section 199 Cr.P.C., the defamer can be prosecuted. The level of scrutiny by a Sessions Judge/Magistrate before taking cognizance of criminal defamation cases under section 499 IPC is more stringent and painstaking as there is no police report/charge sheet available as in the case of cognizable offences where the Police Officer submits an investigation report under section 173 (3) of Cr.P.C. to the Learned Magistrate. The legislature has tightened the screws in so far as criminal

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defamation cases filed through a public prosecutor under section 199(2) Cr.P.C. are concerned to avoid any abuse or misuse of the said provision.

52. Insofar as the role of the public prosecutor is concerned, Bairam Muralidhar's case rendered by the Hon'ble Supreme referred to supra has made it clear that a public prosecutor cannot act like a mere post office but should independently apply his mind before prosecuting the criminal complaint and he should also be fair to the court.

53. In the considered view of this court, following are the basic requirements of a Public Prosecutor:

a) A Public prosecutor must consider himself/herself as an agent of justice.

b) There should not be on the part of the public prosecutor a blind eagerness for, or grasping at a conviction.

c) The prosecution of the accused persons has to be conducted with utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community. There should not therefore be seemly eagerness for, or grasping at a conviction.

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d) A public prosecutor should not by statement aggravate the case against the accused, or keep back a witness because his/her evidence may weaken the case of the prosecution.

e) A public prosecutor should place before the Court whatever evidence is in his/her possession.

f) A public prosecutor should discharge his/her duties fairly and fearlessly and with full sense of responsibility that attaches to his/her position.

g) Prosecution does not mean persecution.

54. In defamation cases filed under Section 199(2) Cr.P.C., the public prosecutor plays a very vital role. The role is very special because in those matters, the public prosecutor plays a dual role both as a person representing the public servant/constitutional functionary as well as a public prosecutor. Therefore, the cardinal principles mentioned supra will have to be strictly adhered to by the public prosecutor while filing complaints under section 199(2) Cr.P.C.

55. The Sessions Court before taking cognizance of a complaint

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filed under section 199(2) Cr.P.C. has to apply its judicial mind to the materials available on record and only if it is satisfied that ingredients for taking cognizance under Section 199(2) has been made out, shall take cognizance and issue summons to the accused. When a specific procedure is contemplated under section 200 Cr.P.C., it cannot be deviated by adopting some other procedure which is not prescribed, even though it may be convenient to the complainant. The purpose of recording the substance of sworn statement by the Magistrate/Sessions Judge is to enable the Magistrate/Sessions judge to satisfy himself of the allegation in the complaint to proceed further in the matter and also put the accused on notice about the allegations.

56. This Court having elaborately considered and narrated the criminal defamation law and the freedom of speech and expression provided under Article 19(1) of the Constitution of India shall now consider the merits of each of the writ petitions separately. In all the cases, the core ingredient required for prosecution through a public prosecutor under section 199(2) Cr.P.C. namely "Defamation of the State" is missing. In all the matters, while granting sanction for

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prosecution to a public prosecutor, the respective sanction orders are totally silent as to whether the state has been defamed on account of the alleged defamation of the public servant/constitutional functionary while discharging his/her public functions. It has been made crystal clear by the Hon'ble Supreme Court in ***KK Mishra's case*** as well as in ***P.C Joshi's case*** referred to supra that prosecution under section 199(2) Cr.P.C. is on account of defamation against the State.

57. As laid down by various decisions of the Hon'ble Supreme Court as well as the High courts, before granting sanction for prosecution, the competent authority of the State shall have to apply its mind to the materials and should be satisfied with the same and only thereafter should sanction prosecution. As observed earlier, in all the cases which are the subject matter of consideration by this court, the State has sanctioned prosecution in a mechanical fashion by total non application of mind as the fundamental requirement for prosecution under section 199(2) Cr.P.C. namely "Defamation of the State" does not find a place in all the sanction orders. The public prosecutor as well as the Sessions Judge in cases where cognizance has already been taken by the Sessions

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Court have also not applied their mind independently as the core essence of prosecution under section 199 (2) Cr.P.C. namely "Defamation of the state" has not been satisfied as seen from the sanction orders. On this score alone, all the Government Orders and the consequential complaints for criminal defamation under section 199(2) Cr.P.C. will have to fail.

58. The pleadings in the respective complaints also does not spell out any defamation of the State. The Public Prosecutor or any other witness has also not been examined as a witness and given their sworn statement before the Sessions Court which is mandatory under Section 200 Cr.P.C. The Sessions Court has also in a mechanical fashion by total non application of its judicial mind and without detailing the materials it had scrutinized has taken cognizance and issued process to the accused. All these factors will conclusively infer abuse of process of law against the respective accused and hence, all the sanction orders as well as the corresponding complaints filed under Section 199(2) will have to be necessarily quashed.

59. These batch of writ petitions involve some cases where on the

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face of it, a conclusive inference can be made that no Criminal Defamation whatsoever has been made out. However, in respect of other cases, the accused can be prosecuted for criminal defamation under section 199(6) Cr.P.C. before the Magistrate but not under Section 199(2) Cr.P.C. before the Sessions Court as no "Defamation against the state" has been made out or projected to by the State in its sanction orders or in the respective Complaints. This court shall now individually deal with each of the writ petitions which are the subject matter of consideration and segregate them into cases where there is no defamation at all and cases where defamation may fall under section 199(6) Cr.P.C. to prevent any further abuse against the Petitioners against whom no criminal defamation whatsoever has been made out.

60. Discussion with regard to each of the writ petitions:

(a) W.P.Nos.5129 & 5130 of 2012

In these cases, the petitioner in W.P.No.5129 of 2012 was the Editor in Chief, printer and publisher and the petitioner in W.P.No.5130 of 2012 was the "Author and correspondent" of the Daily Newspaper "The Hindu" when the alleged defamatory article was published. The

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newspaper published on 08.01.2012 under the Caption "AIADMK activists attack Nakkeeran Office". According to the respective Petitioners, the said news item published in "The Hindu" is nothing but a true and factual narration of what happened in Nakkeeran office and how the office was attacked and the reasons therefor. The role of any newspaper is only to publish the news as it happened. As a political personality/constitutional functionary, the then Chief Minister or the State could have very well refuted those allegations by a counter press statement. The judgment of the Hon'ble Supreme Court in ***Kartar Singh vs State of Punjab*** reported in ***AIR 1956 SC 541*** addresses this issue and holds that public men should be thick skinned with respect to comments made against them in discharge of their public functions. Further, in the instant case, no public functions are involved and pertains only to a report of an incident that happened in the Party office of the Political Party to which the chief Minister belongs. This case also does not satisfy the ingredients of criminal defamation whatsoever and these Writ Petitions will have to be allowed.

(b) W.P.No.27764 & 27765 of 2012

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In these cases, the petitioner in W.P.No.27764 of 2012 was the Publisher and Printer and the petitioner in W.P.No.27765 of 2012 was the Editor of the Daily newspaper "The Hindu". The newspaper published the press statement on 01.08.2012 given by Mr.Vijayakanth, who was the then leader of the opposition stating that "Jayalalitha running a Government through statements". The press statement of Mr.Vijayakanth was also published by other newspapers. Infact, when the defamation complaint against Vijayakanth and the petitioners was pending before the Sessions Court, the Government revoked G.O.Ms.No.673 dated 04.08.2012 which was the earlier Government order sanctioning prosecution by the Public Prosecutor against Mr Vijayakanth. The defamation complaint against the Petitioners also falls since the Criminal defamation prosecution launched against the alleged actual perpetrator namely Mr Vijayakanth has already been dropped by the State. Further in these cases also, the Petitioners have not made any personal imputation against the Chief Minister but have only published the press statement given by Mr Vijayakanth, MLA and Leader of Opposition. Hence there is no Criminal defamation at all.

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(c) W.P.No.31552 of 2012

In this case, the first petitioner was the Editor, Printer and Publisher, the second petitioner was the Associate Editor, the third and fourth petitioners were the reporters of the Bi-weekly Tamil Magazine “Nakheeran” when the alleged defamatory article was published. The magazine published in its issue dated 2012 July 11th to 13th a report based on a) an alleged interview with a lady, who claimed to be the daughter of late Chief Minister and b) the alleged interview of her Advocate. Eventhough, the Petitioner claims that other publications like "Kumudham-Reporter" and "Junior-Vikatan" have also published similar news and information in an elaborate manner much more inciteful than the petitioner's publication, that is immaterial if the report published is utter falsehood and has been published with malice. However by the alleged defamation, neither the State is defamed or the Constututional functionary has been defamed while discharging her public functions. Hence Section 199(2) Cr.P.C is not attracted though prosection under section 199(6) by the constitutional functionary is maintainable as prima facie the statement seems defamatory. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the

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Sessions court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional functionary in the discharge of her public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petition will have to be allowed.

(d) W.P.No.31553 of 2012

In this case, the first petitioner was the Editor, the second petitioner was the Associate Editor and the third petitioner was the reporter of the Bi-Weekly Tamil Magazine "Nakkeeran" when the alleged defamatory article was published. The magazine in its Bi-weekly issue dated 2012 January 7th to 10th published an article under the heading "Beef eating Brahmin". It is only a report as to how Miss. Jayalalitha was projected as a leader by late Mr.M.G.Ramachandran, despite being a brahmin. In this case also, the Complaint cannot be filed under Section 199(2) Cr.P.C as the alleged statement is not with regard to the conduct of the Chief Minister while discharging her public functions and further State has also not been defamed. In this case, Section 199(6) Cr.P.C may get attracted not Section 199(2). As in the previous cases, there is total

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non-application of mind by the State, Public Prosecutor and the Sessions court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional functionary in the discharge of her public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petitions will have to be allowed.

(e) W.P.Nos.25377 & 25378 of 2012

In these cases,the petitioner in W.P.No.25377 of 2012 was the Editor and the petitioner in W.P.No.25378 of 2012 was the Printer and Publisher of the newspaper, "Times of India" Chennai edition when the alleged defamatory article was published. The newspaper published on 02.08.2012, an article under the heading "*AS CORPN DIGS PAST, DMK CADRES HIT THE STREETS OVER CHOLERA*". The said article is nothing but a reporting of the protest made by DMK cadres with regard to the outbreak of Cholera in the city. The role of any newspaper is only to disseminate the news that is happening around. You cannot treat it as defamation even if there are some inaccuracies in the report. Criminal defamation is much more than that i.e the imputation must be made

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recklessly with malice. The ingredients required for criminal defamation under Section 499 Cr.P.C must be strictly satisfied. Further the publication is not in any way connected with the conduct of the constitutional functionary in the discharge of her public functions. The complaint was also filed on the very next day after issuance of G.O and has been filed in a haste. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as there is no criminal defamation at all . Hence the Writ petitions will have to be allowed in these cases also.

(f)W.P.No.11624 of 2013

In this case, the petitioners have challenged the Criminal complaint C.C.No.2 of 2013. The first petitioner was the Editor and Printer and the second petitioner was the publisher of the Tamil daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 06.11.2012 a news item under the caption "Special bus for Deepavali to be operated by inexperienced drivers". The case of the prosecution is that the said article defamed Miss. J.Jayalalitha, the then Chief Minister. The article does not say that the

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Drivers are not qualified or do not have a valid driviing license. It only says that the Drivers are inexperienced. The reading of the whole article will reveal that the news report was published only after getting inputs from the Transport department. Further as in all cases ,the Government order or the Complaint does not reveal that the State has been defamed which is an essential ingredient for filing a Complaint through a Public prosecutor under Section 199(2) Cr.P.C. As a Newspaper, they have the freedom to publish reports based on inputs received from various agencies. In the instant case as seen from the publication, the Petitioner claims to have received inputs from the officials in the Transport Department. Further in the instant case, neither the Government Order or the Complaint reveal whether the State has been defamed or as to how the State has been defamed which is an essential ingredient for prosecution under section 199(2) Cr.P.C through a public Prosecutor. In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as the state has not been defamed nor is there a pleading to that effect. Hence, the complaint filed through a public prosecutor is not maintainable. Hence

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the Writ petitions will have to be allowed.

(g)W.P.No.11625 of 2013

In this case, the petitioners have challenged the complaint C.C.No.7 of 2013. The first petitioner was the Editor and the second petitioner was the Publisher of the Tamil Daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 08.11.2012, a news item titled "Interference by Minister's brother blocked the implementation of the Central Governments order against Cable TV Operators". The case of the prosecution is that the news report has defamed the Transport Minister Mr.Senthil Balaji. The news item is about issues in Cable TV operations in Karur. Nowhere in the news item, the Minister of Transport has been defamed. The Government order or the Complaint also does not reveal whether the State has been defamed. In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C. In this case, Section 199(6) Cr.P.C may get attracted not Section 199(2). As in the previous cases, there is total non-application of mind by

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the State, Public Prosecutor and the Sessions court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional functionary in the discharge of his public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petitions will have to be allowed.

(h)W.P.No.11626 of 2013

In this case, the petitioners have challenged G.O.Ms.No.173 dated 21.02.2013 sanctioning prosecution and criminal complaint C.C.No.22 of 2013. The first petitioner was the Editor and Printer and the second petitioner was the Publisher of the Tamil Daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 11.02.2013 a news item under the heading "Government information department allocates separate space for AIADMK in Government Website". The case of the prosecution is that the news item has defamed the Director of information and public relations Mr.J.Kumaraguruparan in the discharge of his public function. The news item carried the information that in the government website "www.tndipr.gov.in", a separate channel was given to AIADMK to post the happenings of their

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party. In this case also neither the Government order nor the Complaint reveal as to whether the State has been defamed or as to how the State has been defamed which is a necessary ingredient for prosecution under Section 199(2) Cr.P.C. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court. This case may fall under Section 199(6) but not under Section 199(2) Cr.P.C. Hence, the Writ petition will have to be allowed.

(i)W.P.No.11627 of 2013

In this case, the petitioners have challenged the criminal complaint C.C.No.10 of 2013. The first petitioner was the Editor and printer and the second petitioner was the publisher of the Tamil Daily " Dinamalar" when the alleged defamatory article was published. The newspaper published on 10.11.2012 a news item which carried the news regarding the electricity generated in sugar mills. The case of the prosecution is that the said news item has defamed Thiru Natham R.Viswanathan, the Minister for Electricity, Prohibition and Excise. According to the petitioner, the news item carries the news collected by the reporter regarding the electricity generated in sugar mills and the same has been

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published for public good without any malice. In this case also ,the Complaint has been filed under Section 199(2) Cr.P.C without pleading as to whether the State has been defamed or as to how the State has been defamed. In this case, Section 199(6) Cr.P.C may get attracted not Section 199(2). As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court . Hence the Writ petition will have to be allowed.

(j)W.P.No.11628 of 2013

In this case, the petitioners have challenged the criminal complaint C.C.No.11 of 2013. The first petitioner was the Editor and Printer and the second petitioner was the Publisher of the Tamil Daily "Dinamalar" when the alleged defamatory article was published. The newspaper published on 07.11.2012 an article stating that the Co-optex employees have stated that only due to the admonition of the Minister Dr.S.Sundaraj, an employee by named Kothanayaki died. The case of the prosecution is that the news report has defamed Dr.S.Sundarajan, Minister for Handloom and Textiles in the discharge of his public functions.According to the Petitioners, the news item carries only the

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report collected by the newspapers reporters and no part of the report is defamatory as there is no malice involved. In this case also ,the Complaint has been filed under Section 199(2) Cr.P.C without pleading as to whether the State has been defamed or as to how the State has been defamed. In this case, Section 199(6) Cr.P.C may get attracted not Section 199(2). As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court . Hence the Writ petition will have to be allowed.

(k) W.P Nos. 4860 and 4861 of 2012

The finding of this court in the previous case W.P No.11728 of 2013 applies to this case also as the petitioner as an Editor, Printer and Publisher of "Tamil Murasu" published on 02.12.2011 only the press statement given by Mr. MK Stalin, MLA with regard to the contents of his complaint which he had lodged against the Chief Minister with the DGP office requesting to take appropriate action by registering an FIR against the Chief Minister for land grabbing at Kodanad and Siruthavur . In this case also, there is no personal imputation made against the Chief Minister by the petitioner who had published only the press statement of MK Stalin, MLA. Therefore, no criminal defamation has been made out

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against the petitioner whatsoever. Hence the government order as well as the consequential complaint against the petitioner as in the earlier case for the same reasons will have to be necessarily quashed.

(l) W.P.Nos.23679 & 25296 of 2012

In these cases,the petitioner in both the writ petitions was the Publisher, Printer and Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. G.O.No.709 dated 08.08.2012 sanctioning prosecution was challenged in W.P.No.23679 of 2012 and the consequent complaint C.C.No.14 of 2012 was challenged in W.P.No. 25296 of 2012. The Tamil Daily published on 30.07.2012 under the heading "Kazhaignar Answers" an interview conducted by a reporter with Mr.Karunanidhi, the former Chief Minister on the continuous absence of Miss.J.Jayalalitha, the then Chief Minister in Chennai for two months and staying in an unknown place. The petitioner is not the author and has only reported the statement of Mr Karunanidhi and further the statement has no nexus with regard to the conduct of the constitutional functionary in the discharge of her public functions.In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C as the alleged statement is

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not with regard to the conduct of the Chief Minister while discharging her public functions and further the State has also not been defamed. Since there is no personal imputation, criminal defamation whatsoever is not attracted. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions Court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional functionary in the discharge of her public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petitions will have to be allowed.

(m) W.P.Nos.23680 & 25297 of 2012

In these cases, the petitioner in both the Writ petitions was the Publisher, Printer annd Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. G.O.No.716 dated 14.08.2012 sanctioning prosecution was challenged in W.P.No.23680 of 2012 and the consequent complaiint C.C.No.16 of 2012 was challenged in W.P.No.25296 of 2012. The Tamil Daily published on 09.08.2012, a statement made by Mr.M.K.Stalin, M.L.A about the reckless filing of false cases against the opponents by Miss. Jayalalitha for raising the issue of

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her continuous absence at Chennai for several months and staying at Kodanadu. The petitioner is not the author and has only reported the statement of Mr M.K Stalin, MLA and further the statement has no nexus with regard to the conduct of the constitutional functionary in the discharge of her public functions. In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C as the alleged statement is not with regard to the conduct of the Chief Minister while discharging her public functions and further State has also not been defamed. Since there is no personal imputation, criminal defamation whatsoever is not attracted. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional functionary in the discharge of her public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence these Writ Petitions will have to be allowed.

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(n) W.P.No.33290 of 2012

In this case, the petitioner has challenged G.O.No.874 dated 12.10.2012. The petitioner was the Publisher, Printer and Editor of the

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Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 23.08.2012 an interview by their reporter with Mr.Karunanidhi, the former Chief Minister. Mr.Karunanidhi is reportedly to have said in the interview that files are getting cleared from the Ministers through their representatives. The newspaper has only published the interview and the statements made in the interview are not authored by the newspaper. The petitioner is not the author and has only reported the statement of Mr Karunanidhi and hence criminal defamation will not lie. Further, the State has also not been defamed. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as the state has not been defamed and the Petitioner the author of the article. Hence the Writ petitions will have to be allowed.

(o)W.P.No.33291 of 2012

In this case, the petitioner has challenged G.O.Ms.No.954 dated 12.10.2012. The petitioner was the Publisher, Printer and Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 23.08.2012 an interview with

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Mr.M.Karunanidhi, the former Chief Minister under the caption “Kalaignar replies”. The case of the prosecution is that the news item harmed the reputation of the Minister of Labour, Thiru.S.T.Chellapadian, in the discharge of his public functions. The newspaper has only published the interview and the statements made in the interview are not authored by the newspaper and further the statement has no nexus with regard to the conduct of the constitutional functionary in the discharge of his public functions. In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C as the alleged statement is not with regard to the conduct of the Minister while discharging his public functions and further State has also not been defamed. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional functionary in the discharge of his public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petition will have to be allowed on this sole ground.

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(p)W.P.No.32392 of 2012

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In this case,the petitioner has challenged G.O.Ms.No.840 dated 03.10.2012 and the complaint C.C.No.22 of 2012. The petitioner was the Editor, Printer and Publisher of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 23.08.2012 an interview with Mr.Karunanidhi, former Chief Minister under the caption "Kalaignar replies". The case of the prosecution is that the news item has harmed the reputation of Thiru K.T.Pachammal, who was the Minister of Forest at that time. The newspaper has only published the contents of the interview and the statements made in the interview are not authored by the newspaper. The petitioner has only reported the statement of Mr Karunanidhi and further the statement has no nexus with regard to the conduct of the constitutional functionary in the discharge of his public functions. In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C as the alleged statement is not with regard to the conduct of the Minister while discharging his public functions and further State has also not been defamed. As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional

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functionary in the discharge of his public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petition will have be allowed.

(q) W.P.No.32393 of 2012

In this case, the petitioner has challeged G.O.Ms.No.927 dated 25.10.2012 sanctioning prosecution and complaint C.C.No.27 of 2012. The petitioner was the Editor, printer and Publisher of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 23.08.2012 an interview with Mr.Karunanidhi, former Chief Minister under the caption " Kalaignar replies". The case of the prosecution is that the news item has harmed the reputation of Mr.O.Panneerselvam, the then Finance Minister, Government of Tamil Nadu in the discharge of his public functions. The newspaper has only published the contents of the interview and the statements made in the interview are not authored by the newspaper and the State has also not been defamed.In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C as the alleged statement has not defamed the State. In this case, Section 199(6) Cr.P.C may get attracted not Section

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199(2). As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as the state has not been been defamed and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petition will have to be allowed on this sole ground.

(r) W.P.No.32394 of 2012

In this case, the petitioner has challenged G.O.No.839 dated 03.10.2012 sanctioning prosecution. The petitioner was the Publisher, Printer and Editor of the Tamil Daily "Murasoli", when the alleged defamatory article was published. The newspaper published an interview with Thiru. Karunanidhi, former Chief Minister with regard to the report which appeared in another Tamil Magazine "Anandha Vikatan" regarding the lining up of the Ministers and falling on the feet of Ms.J.Jayalalitha, the Chief Minister to show their respects to her at the Secretariat. The newspaper has only published the interview and the statement made in the interview is not authored by the newspaper. The case of the prosecution is that the news item will harm the reputation of Minister for School Education, Sports and Youth Welfare, Mr.N.R.Sivapathy in the

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discharge of his public functions. The petitioner is not the author and has only reported the statement of Mr Karunanidhi and further the statement has no nexus with regard to the conduct of the constitutional functionary in the discharge of his public functions.In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C as the alleged statement is not with regard to the conduct of the Minister while discharging his public functions and further the State has also not been defamed. In this case, Section 199(6) Cr.P.C may get attracted not Section 199(2). As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as neither the state has been defamed nor the defamation arises out of the conduct of the constitutional functionary in the discharge of his public functions and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petition will have to be allowed.

(s) W.P.No.33218 of 2013

In this case, the petitioner was the Publisher, Printer and Editor of Tamil Daily “Murasoli” when the defamatory article was published. The newspaper published an article on 01.08.2012 under the heading

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"AIADMK government to make it work needs a meeting condemning its Governance." The article claims that the Government has not taken any action on the complaint given and instead of taking action, the Government is making statements and challenging the opposition. The news items published are only transmitted from other people and are the views of the public and not the personal views of the publisher. The petitioner has challenged G.O.Ms.No.757 dated 03.09.2013 sanctioning prosecution. The petitioner claims that the statement published is true and has been published without malice. A counter press statement could have been given refuting the allegations. Further the statement has not defamed the State in any manner and therefore the Complaint cannot be filed under Section 199(2) Cr.P.C. In this case, Section 199(6) Cr.P.C may get attracted not Section 199(2). As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as the state has not been defamed and hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petition will have to be allowed.

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(t) W.P.No.23681 of 2012

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In this case, the petitioner has challenged G.O.Ms.No.457 dated 21.05.2012 sanctioning prosecution. The petitioner was the Printer, Publisher and Editor of the Tamil Daily "Murasoli" when the alleged defamatory article was published. The newspaper published on 20.05.2012 an article under the caption "Jayalalitha sand mafia committing atrocities. Officials and public hand in glove." The case of the prosecution is that the article will harm the reputation of Miss.J.Jayalalitha, the then Chief minister in the discharge of her public functions. It is the case of the Petitioner that the report has been published believing the same to be true. The Government order sanctioning prosecution or the Complaint does not reveal in what way the State has been defamed by the Article. There must be a pleading in the Complaint as to how the State has been defamed ,which is lacking in the instant case.In this case also , the Complaint cannot be filed under Section 199(2) Cr.P.C as there is no averment in the Complaint whether the State has been defamed or as to how the State has been defamed. In this case, Section 199(6) Cr.P.C may get attracted not Section 199(2). As in the previous cases, there is total non-application of mind by the State, Public Prosecutor and the Sessions court as the state has not been

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defamed nor is there a pleading to that effect. Hence the complaint filed through a public prosecutor is not maintainable. Hence the Writ petition will have to be allowed.

(u) W.P Nos.11727 & 11728 of 2013

In these cases, the Petitioner as Editor, Printer and Publisher of the Tamil news Daily "Dinakaran" published a press statement of Mr Vijaykanth, MLA on 31.03.2013 wherein he had stated that the Chief Minister had used the film industry to reach her present status but has now completely forgotten her past for climbing up the ladder. The Petitioner has only published the contents of the press statement given by Mr.Vijayakanth, MLA and no personal comments/imputation has been made against the Chief Minister. Section 499 IPC makes it clear that imputation must be from the mouth of the alleged defamer. The illustrations given under section 499 IPC also gives examples of personal imputations only. Further, the impugned article in the newspaper does not by no stretch of imagination relate to the conduct of the chief Minister in the discharge of her public functions. On the face of it, the article published by the newspaper will not come within the definition of

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defamation as defined under section 499 IPC. The action initiated against this petitioner is a clear abuse of process of law and the said action will have to be nipped in the bud at the threshold itself. The law laid down by the Hon'ble Supreme Court in Bhajan Lal's case on quashing of FIRs can be applied to the case of quashing of government orders sanctioning prosecution for criminal defamation also as principles evolved in Bhajan Lals case are only to prevent abuse of process of law in Criminal prosecution. The instant case neither falls under the category of 199(2) or 199(6) Cr.P.C. as there is no criminal defamation at all. Hence the Government order sanctioning prosecution and the consequent Complaint will have to be necessarily quashed.

Relevancy of the judgements cited by the respondents:

61. This court shall now consider the judgements relied upon by the State and its relevancy one by one:

a) The law laid down by the Hon'ble Supreme Court in a) Prakash Singh Badal's case reported in (2007) 1 SCC 1 b) Dinesh Kumar's case reported in (2012) 1 SCC 532 and c) Ameerjan's case reported in (2007) 11 SCC 273 case will not come to the assistance of the State as all those

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cases involve offences under the Prevention of Corruption Act which is a cognizable offence and the punishment is much harsher, whereas offence for criminal defamation is a non cognizable offence, where the punishment is lesser and further proving the offence is much difficult in view of the large number of exceptions under section 499 IPC. Further in Criminal defamation cases, the police are not empowered to register an FIR and the offender can be tried only in a Private Complaint before the Magistrate or the Sessions Court as the case may be. As observed earlier by this court that in all the cases which are the subject matter of this Courts consideration, the State has not applied its mind while granting sanction for prosecution as even as per their respective sanction orders, there is no reference to any Defamation of the State which is the essence of any Defamation Complaint filed under Section 199(2) Cr.P.C. The ultimate test as to whether Sanction orders can be interfered with at this stage is to see whether the allegations have any substance for prosecution under Section 199(2), which in the considered view of this Court does not have any as there is no allegation in the sanctioning orders that the State has been defamed.

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b) Mansukhlal Vithaldas Chauhan'case reported in (1997) 7 SCC 62 SCC 273 supports the case of the Petitioners and not the State. The Hon'ble Supreme Court held that that the validity of sanction under section 197 Cr.P.C depends on applicability of mind by the sanctioning authority. Infact in that case ,the Hon'ble Supreme Court quashed the sanction order for non application of mind by the Sanctioning authority.In the cases on hand when there is no allegation that the State has been defamed, there is no question of prosecution under section 199(2) Cr.P.C and therefore there is total non application of mind by the sanctioning authority and this court is empowered to interfere at this stage.

c) Municipal Council, Neemuch's case reported in (2019) 10 SCC 738 has no relevance for the instant cases as that was a case involving administrative orders not arising out of any mandatory statutory requirement whereas the sanction orders for prosecution is borne out of mandatory statutory requirement under Section 199(4) Cr.P.C. In Neemuch's case, the Hon'ble Supreme Court was dealing with sanction under the Municipal Corporation (Transfer of Immovable Property) Rules 1994 which are internal rules to help in governing the principal law.

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Whereas the mandatory requirement of sanction under Section 199(4) is found in the principal enactment itself namely the Criminal Procedure Code. Even if the principles laid down in Neemuch's case is applied, the instant sanction orders will have to be quashed as there is total non application of mind by the State as without any allegation of any defamation of the State, sanction orders have been issued.

d) Bhajan Lal's case reported in 1992 Supp 1 SCC 335 infact supports the case of the Petitioners. The cases on hand are fit cases for use of the extraordinary power under Article 226 or the inherent power under Section 482 Cr.P.C as laid down by the Hon'ble Supreme Court as the respective criminal prosecutions have been instituted under Section 199(2) Cr.P.C without any allegation that the state has been defamed which is the essence of criminal defamation complaint filed through a public prosecutor. When on the face of it, no ground for prosecution under section 199(2) has been made out, the sanction orders and the consequent complaints will have to be necessarily quashed.

62. Before Parting, after momentarily removing my cloak as a

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Judge of this Court and as an ordinary citizen of this great country, I would like to remind the Media the great role they play in nation building. The media is considered as the fourth pillar of Democracy and they are infact the watchdog of any democracy. By their truthful and honest reporting, they stand as pillars for building one of the respected and successful democracies of the World. Our nation has always respected the role of the media and has highest regard for their independent and truthful reporting. But of late for quite number of years, there seems to be some decay happening in every sphere of democracy including the Media. If the rottenness is not removed sooner than later, it will spread like fire causing great peril to our robust Democracy.

63. Our National Motto is "Satyameva Jayate" which means "Truth alone triumphs". We respect the National Anthem, National Flag, National Emblem etc., but we sometimes forget to respect the National Motto which is also equally important like others for the survival of our democracy. I am confident all media houses will take this humble request from an ordinary citizen in the right spirit and carry it forward in the

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best interest of this great nation. Mahatma Gandhi said “the sole aim of journalism should be service. The newspaper is a great power, but just as an unchained torrent of water submerges the whole countryside and devastates crops, even so an uncontrolled pen serves but to destroy. If the control is from without, it proves more poisonous than want of control. It can be profitable only when exercised from within.” The Indian media is highly respected and this is the reason why the nation upto now has thought it fit not to regulate the contents of reporting by imposing harsh regulations. I am confident that the media will take a cue from Mahatma Gandhi's advise and introspect from within and help in nation building for the betterment of the generations to come.

64. For the foregoing reasons, all the writ petitions deserve to be allowed as none of the prosecutions fall under the category of Section 199(2) Cr.P.C though some as indicated in this common order may fall under Section 199(6) Cr.P.C. Accordingly, these writ petitions are allowed as prayed for. No costs. Consequently connected miscellaneous petitions are closed.

21.05.2020

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Index : Yes/No
Internet : Yes/No
Speaking Orders/Non-Speaking Orders

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To

1.The Secretary to Government,
Union of India,
Ministry of Law and Company Affairs,
Shastri Bhawan,
New Delhi - 110 001.

2.The Secretary to Government
State of Tamil Nadu,
Public Department, Fort St. George,
Chennai - 600 009.

3.The City Public Prosecutor,
City Civil Court Buildings,
Chennai -600 104.

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ABDUL QUDDHOSE, J.

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Pre-Delivery Order in
W.P.Nos.5129, 31552, 5130, 27764, 27765, 31553, 23679, 32392, 32393, 33291, 23681, 25377, 32394, 25378, 33218, 33290, 4860, 4861, 23680, 25296, 25297 of 2012 and 11624, 11625, 11626, 11627, 11628, 11727, 11728 of 2013

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