**Summary and outcome**

The High Court of Madras in India quashed a batch of criminal defamation cases filed against journalists and media houses for defaming the Chief Minister in her conduct in the discharge of her public functions.

The case was filed by the Public Prosecutor against the Petitioners who were journalists and media organisation. The Petitioners had published a series of articles in 2012 about the then Chief Minister J Jayalalithaa alleging maladministration, corruption and reporting on the opposition’s criticism of the Chief Minister. The High Court of Madras quashed all the cases and explained that public officials were subjected to a higher threshold of criticism by virtue of being in public office and that in all of the cases, there was no defamation against the State per se.

**Facts**

The Petitioners were journalists, editors and publishers of media organisations who had reported on news relating to Selvi J. Jayalalithaa, the then Chief Minister of Tamil Nadu. The Respondents were the City Public Prosecutor, the Union of India and the State of Tamil Nadu. The City Public Prosecutor launched criminal defamation cases against the petitioners in 2012 under [Section 499](https://indiankanoon.org/doc/1041742/) of the Indian Penal Code, 1872 (“**IPC**”) read with [Section 199(2)](https://indiankanoon.org/doc/27007/?__cf_chl_jschl_tk__=312e9316c347726b00d3a8d44c537fe8fd434712-1624891941-0-AQkm84a6_vIVQbmQqYG3fsQvSk0-EhTPbIxS98DkKDwm196lXljcjkWtJv6TTAjsG4Di4uklcOL5K6rv35KSolU1nsu5Hev48WlOA9iswLe2IscOEqMy72yvMBvh4Sb34ujoNYXFEr3m019CjCzTHxAlnd_2swvtSYw4iou-hL3OZ-pIkfpYQItWmGzWSE4M-CR30tzQHyx8OgwN_zFjDluQETgDHn7ESVTYYoWG3LjzqLEoM9oO8m_zV0MXzq5DePCQpMCCwBQGIxvhIeEdZt7l7QFmqARa3MTWd-tB2o-038jLSmsz46_6ftGU_DS-z9W0aGxG8gJVezybnTCzTzPB1m_UN19beesXuVXq7CoLa62pbUFk22FadZmNIylmMUcBQCowyL-rWL24lbzxf1-nSAvH8ekybkHx_FvmEt656b4iDJ6fOddTHyTZdYgMhyntztMcN8-ueDSE_Ds_XnM) of the Code of Criminal Procedure, 1973 (“**Cr.P.C**”). They were accused of defaming the Chief Minister in respect of her conduct in the discharge of her public functions.

Section 499 of the IPC states that anyone who 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. It lays down certain exceptions to this rule including the defence of truth for a statement made in public good, public conduct of public servants and conduct of any person touching any public question. Section 500 of the IPC prescribes a punishment of imprisonment of up to two years, or fine, or both for anyone who commits defamation.

Section 199 of the Cr.P.C. lays down the procedure for prosecution of defamation. It states that when defamation is alleged to have been committed against a person employed in connection with the affairs of a State in respect of her conduct in the discharge of her public functions (such as the Chief Minister in the present case), a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing by the Public Prosecutor.

Petitioner N.Ram (W.P. 5129/2012) was the Editor-in-Chief of ‘the Hindu’ newspaper and B. Kolappan was a journalist working with him (W.P. 5130/2012). They were being prosecuted after Kolappan wrote an article about Jayalalithaa on January 8, 2012 in the Hindu’s bi-weekly Nakkheeran. Kolappan had relied on unnamed sources to present a narrative of Jayalalithaa’s personal and political life. The articles discussed several controversial issues, including Jayalalithaa allegedly being a beef-eater (despite this being prohibited in Hinduism), the expulsion of Ms. Sasikala from Jayalaithaa’s political party, the AIADMK, and political workers from the AIADMK attacking the Nakkheeran’s office for their reporting. S Padmanabhan (W.P. 27764/2012) was the Hindu’s Publisher/Printer and he was being prosecuted along with editor Siddharth Varadarajan (W.P. 27765/2012). They were accused of running another defamatory article on January 8, 2012 that quoted the leader of opposition’s allegations that corruption had become all-pervasive in the state.

Petitioner Sunil Nair (W.P. 25377/2012) and S. Santhanagopalan (W.P. 25378/2012) were the editors of the Times of India Newspaper. They were being prosecuted for running a report quoting opposition leader MK Stalin where he accused Jayalalithaa of taking a vacation while the city was suffering from a cholera outbreak.

The petitioners in the other cases were editors and journalists working at Tamil newspapers and weeklies: Nakkheeran newspaper (W.P. 31552/2012, W.P. 31553/2012); Dinamalar newspaper (W.P. 11624/2013, W.P. 11625/2013, W.P. 11626/2013, W.P. 11627/2013, W.P. 11628/2013); Tamil Marasu newspaper (W.P. 4860/2012, W.P. 4861/2012); Murasoli (W.P. 23679/2012, W.P. 25296/2012, W.P. 23680/2012, W.P. 25297/2012, W.P. 33290/2012, W.P. 33291/2012, W.P. 32392/2012, W.P. 32393/2012, W.P. 32394/2012, W.P. 33218/2013, W.P. 23681/2012); and Dinakaran newspaper (W.P. 11727/2012, W.P. 11728/2012). They were being prosecuted for publishing a number of reports with write-ups, images, caricatures and captions alleging maladministration and corruption in Jayalalithaa’s government.

The cases were pending before the trial court. In the present case, the petitioners had moved a batch of writ petitions before the High Court of Madras seeking that the cases against them be quashed.

The petitioners pleaded a variety of defences including truth, claims that they were not the author of the article, good faith, public good, public conduct and conduct touching public question [pg. 74]. The Respondents argued that the orders granting sanction to initiate prosecution could not be struck down as the ‘probability of the result of the complaint ending in acquittal’ [pg. 67] need not be considered at the time of granting approval at this stage and that the trials continue unaffected.

**Decision overview**

The judgment was delivered by Justice Abdul Quddhose, as a single judge of the High Court of Madras. The primary question before the judge was to determine ‘what is meant by criminal defamation against the state’ [pg. 2] and ‘under what circumstances can a Public Prosecutor ‘launch prosecution for defaming a public servant/constitutional functionary in respect of her conduct in the discharge of her public functions’ [pg. 3].

The High Court of Madras in India quashed a batch of criminal defamation cases filed by the public prosecutor under Section 499 of the IPC read with Section 199(2) of the CrPC against journalists and media houses for defaming the Chief Minister in discharge of her public functions.

Apart from pleading the defences mentioned above, some petitioners argued that the news items were published in ‘pursuit of truth and for public good and no malice’ [para. 6] was involved. Some argued that those holding public office ‘should be open to criticism and citizens have a legitimate and substantial interest/right to know’ [para. 6]. The petitioners submitted that the cases should be quashed as defamation of those in public office is fundamentally different from defamation of private individuals, and initiating prosecution against them would interfere with their right to free speech and expression under Article 19(1) of the Constitution.

The Respondents argued that the trials should continue unabated. They argued that the orders granting sanction to initiate prosecution could not be struck down at this stage as the ‘probability of the result of the complaint ending in acquittal’ [pg. 67] need not be considered at the time of granting approval. They relied upon Section 199(2) Cr.P.C. that did ‘not bar a constitutional functionary/public servant from personally launching prosecution for criminal defamation’ [pg. 73] even in respect of her conduct in the discharge of her public functions.

The Court ruled in favour of the petitioners and quashed all the ongoing cases. It held that ‘none of the prosecutions fall under the category of Section 199(2) Cr.P.C.’ [pg. 150]. It explained that in some cases ‘a conclusive inference can be made that no criminal defamation whatsoever had been made out’ [pg. 120] and in some other cases, while the aggrieved party could have initiated proceedings for private defamation under Section 199(6) but not under Section 199(2) ‘as no defamation against the state had been made out’ [pg. 120]. That said, the element of defamation against the State was missing in all matters when considered individually.

In the first batch of reports of the Hindu and Nakkeeran (W.P. 5129/2012 and W.P. 5130/2012) dealing with AIADMK workers attacking Nakkeeran’s offices, the Court found that it appeared that the articles were based on true and factual narration of what happened and the Chief Minister could have ‘very well refuted those allegations by a counter-press statement’ [pg. 121].

In the second batch of cases against the Hindu (W.P. 27764 and W.P. 27765/2012), the Court held that the Hindu merely published the press statement by the leader of opposition. It noted that the case also deserved to be dropped as the public prosecutor had already dropped the defamation case against the leader of opposition (original maker of the statements).

In the case of Nakheeran posting an alleged interview of a lady who claimed to be Jayalalithaa’s daughter (W.P. 31552/2012), the Court held even though a private defamation claim under Section 199(6) might be maintainable, the present case under Section 199(2) must be quashed as ‘neither the State is defamed or the Constitutional functionary in discharge of her public functions’ [pg. 123]. Similarly, the Court quashed the other cases citing reasons of fair reporting, lack of defamation to State, and publication of news for public good without any malice. It censured the ‘State, Public Prosecutor and the Sessions Court’ [pg. 142] for initiating cases without application of mind as the State had not been defamed in any of the cases.

The Court cited the Supreme Court’s decision in Subramanium Swamy v. Union of India (([Subramanium Swamy v. Union of India](https://globalfreedomofexpression.columbia.edu/cases/subramanian-swamy-v-union-india/)) to reiterate that balancing between one’s right to speech under Article 19(1) and another right’s to life under Article 21 is a constitutional necessity. For defamation of public officials, their performance of ‘public function stands on a different footing than the private activities of a public servant’ [pg. 83] and Section 199 only gives them protection of their official acts. However, criticism is different from defamation and someone performing a public function is ‘bound to tolerant criticism, dissent and discordance but not expected to tolerate defamatory attack’ [pg. 83]. On the role of public prosecutor to launch prosecution, the Court underscored that the ‘public prosecutor cannot act like a post office on behalf of the State Government… and is required to act in good faith, peruse the materials on record and form an independent opinion’ [pg. 84] about whether prosecution should be launched.

The Court relied on the Supreme Court’s decision in Khushboo v. Kanniammal ((Khushboo v. Kanniammal, 2010 5 SCC 600.)) to reiterate that if the complainant vehemently disagreed with the petitioners’ views or reporting, they could have contested their views through news media or another public platform. It held that the law should not be used to chill freedom of speech and expression. It relied on Bennett Coleman v. State of Jammu and Kashmir ((Bennett Coleman v. State of Jammu and Kashmir (1975) CRI LJ 211.)) to state that the right to comment on public affairs includes the right to criticise people holding public posts and also the right to criticise the public policies.

Finally, the Court cited Kartar Singh v. State of Punjab ((Kartar Singh v. State of Punjab, AIR 1956 SC 541.))  to reiterate that even ‘vulgar abuses made against … the Chief Minister will 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’ [pg. 97]. It explained that ‘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’ [pg. 112]. It said that this was especially true ‘in an era of social media where there are scores of abusive contents made against public figures’ [pg. 112]. Doing so would not only clog courts with innumerable matters but might also be abused to ‘settle scores with opposition political parties’ [pg. 112]. Thus, a public servant must be able to face criticism and they ‘cannot use criminal defamation cases to throttle democracy’ [pg. 113].

In a useful direction for taking cognisance of offences under future cases under Section 499 of the IPC, the Court reiterated that as a complaint under Section 499 can only be registered by a Magistrate (and not the police), the level of scrutiny is ‘more stringent and painstaking’ [pg. 114]. To conclude, the Court allowed the writ petitions and quashed all the defamation proceedings that were subject matter of the case.

**Decision direction**

The judgment expanded expression by quashing criminal defamation cases against well-known journalists and media houses. As India suffers from high judicial pendency in the criminal justice system, this judgment protects expression in practice by quashing the cases from going into a protracted trial.  The judgment reiterated that the threshold for scrutiny in taking cognizance of criminal defamation cases is stringent and painstaking. The judgment also reiterated that public officials cannot abuse the special category of defamation against the state to stifle free speech and criticism on matters of public interest.