

(1975) 12 MAD CK 0007

In the Madras High Court

Case No : Writ Petition 4492 to 4494 of 1975

M.G. Ramachandran

APPELLANT

Vs

Government of Tamil Nadu and another

RESPONDENT

Date of Decision : 24-12-1975

Acts Referred:

Citation : (1976) LW(Cri) 96

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : T.R. Ramachandran, for G. Ponnaiyan and P.H. Pandion, for the Appellant; T. Sathivdev, Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—As the points involved in all the writ petitions are substantially the same, it is convenient to dispose of them together.

2. The Petitioner is the same in all these there writ petitions. He is a Member of the State Legislative Assembly and the Leader of the Opposition.

In respect of a speech made by the Petitioner at Gudiyattam on 26th November, 1972, which was published in the Navasakthi dated 27th

November, 1972, the Petitioner and the publisher have been prosecuted for defamation under Ss.500 and 501, I.P.C. in C.G. No. 22 of 1973 on

the file of the Second Additional Judge, City Civil Court, Madras and that is the subject matter in W.P. 4492 of 1975. In respect of another

speech made by the Petitioner which was published in the issue of Nathigam dated 27th November 1972, similar criminal proceedings have been

initiated against the Petitioner and the publisher of Nathigam in C.C. 21 of 1973 before the same court and it is the subject matter of W.P. 4493 of

1975. In respect of a statement issued to the Press by the Petitioner on 23rd October, 1972 which was published in the issue of Swadesamitran

the Petitioner and the publisher of Swadesamitran have been prosecuted u/s 198-B CrI. P.C., 1898, read with Section 500, I P.C. in C.C. 3 of

1973 which is the subject matter of W P. 4494 of 1975. All the above criminal prosecutions have been launched on the basis of the sanctions

obtained u/s 198-B, CrI. P.C. The Petitioner has challenged the validity of the sanctions obtained under the said section and seeks writs of

certiorari to quash the same.

3. The main contention advanced by the Petitioner is that Section 198-B is violative of Article 14 of the Constitution in that it makes a

discrimination between prosecutions for defamation against public servants and against Ministers that the said discrimination had no rational nexus

with the object sought to be achieved by that section, that the sanctions granted in all the three cases by the Chief Secretary to Government u/s

198-B(3) is void and that, therefore, the prosecution initiated on the basis of those sanction orders cannot be validly sustained. The other

contentions raised by the Petitioner relate to matters which can very well be raised before the criminal court where the proceedings are pending, if

the proceedings initiated on the basis of the sanction orders are held to be valid. Hence, I do not consider it necessary to deal with the other

contention.

4. As regards the contention as to the validity of the sanctions granted under S-198-B(3) on the ground based under Article 14 of the Constitution,

the learned Advocate General contends that, in view of the Presidential Order prohibiting persons from moving the courts for enforcement of the

rights conferred by Article 14 etc. by C.S R 361 (2) dated 27th June, 1975, it is not open to the Petitioner to raise the said objection based under

Article 14 of the Constitution, and that in any event the objection has no substance at all as the classification made in Section 198-B is justifiable

having regard to the position occupied by the categories of persons referred to in the various Sub-sections. It is also submitted on behalf of the

Respondents that the categories of persons mentioned in Section 198-B(3) CrI. P.C. form a separate class by themselves and as such the

classification is to prevent Ministers and Government servants from being

harassed or distracted from honest discharge of their duties by irresponsible or scurrilous speeches and that having regard to the fact that the interest of the State is inextricably lined up with the discharge of their work, the special procedure relating to launching of prosecutions for defamation of public servants and State and Central Ministers has got a clear nexus to the object of classification. Thus the question that calls for a decision is as to whether the orders of sanction for prosecution in all these cases are bad for the reasons that two different authorities have been constituted for granting sanction in respect of similar offences u/s 198-B which is said to be violative of Article 14 of the Constitution.

5. The learned Advocate-General, as already pointed out, has taken the objection that it is not open to the Petitioner to invoke Article 14 of the

Constitution in view of the said Presidential Order during the subsistence of the proclamation of emergency under Article 352 of the Constitution

But, as I am of the view that the Petitioners contention based under Article 14 of the Constitution cannot, in law, be sustained, the Petitioner need

not be shut out from raising that point on the basis of the Presidential Order.

6. Mr. T. R. Ramachandran, learned Counsel for the Petitioner, contends that Section 198-B(3) in so far, as it makes a distinction between the

Central or State Ministers on the one band and the public servants employed by the Central or State Government on the other is hit at by Article

14 of the Constitution and, therefore, the sanction given u/s 198-B(3)(b) is invalid.

7. Section 198-B Code of Criminal Procedure 1898 sets out the procedure for initiating prosecutions for defamation against certain persons in

respect of their conducts in the discharge of public functions. Sub-section 1)(sic) of that section says that when any offence falling under Chap. XXI

I.P.C. is alleged to have been committed against the President or the Vice President or the Governor of a State or a Minister or any other public

servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of the public functions, a Court

of Session may take cognizance of that offence, upon a complaint in writing made by the Public Prosecutor. Sub-S.(2) deals with matters which are

to be set out in the said complaint. Sub-S.(3) with which we are immediately concerned, is as follows-

No complaint under Sub-section shall be made by the Public Prosecutor except with the previous sanction-a in the case of the President or Vice-

President of the Governor of a State or any Secretary to the Government authorised by him in this behalf ;

(b) In the case of a Minister of the Central Government or of a State Government, or the Secretary to the Council of Ministers if any or of any secretary to the Government authorised in this behalf by the Government concerned ;

(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State of the Government concerned.

According to sub-S (3), the Public Prosecutor has to file a complaint with the previous sanction of the authorities referred to in Cl. (a) to (e). Cl (b)

provides that if the offence is alleged to have been committed against the President, Vice President or the Governor of a State, in: Sanction has to

be obtained from a Secretary to Government authorised by him in this behalf. Cl. (b) says that if the offence has been committed against any

Central or State Minister, the sanction should be obtained from the Secretary of the Council of Ministers, if any, or of any Secretary to

Government authorised in this behalf by the Government concerned. Cl. (c) states that in the case of any other public servant employed in

connection with the affairs of the Union or of a State, the sanction should be obtained from the Government concerned. In these cases the sanction

has been given by the Chief Secretary to the Government of Tamil Nadu who is the Secretary to the Council of Ministers" referred to in Cl. (b).

8. The Petitioner"s learned Counsel submits that if the offence is said to have been committed against any other public servant, sanction is to be

given by the Government concerned which means, the Governor, while in the case of Ministers, the sanction is to be obtained from a Secretary to

Government who is definitely a subordinate to the Government and that this creates an anomalous situation in that the alleged offence committed by

a public servant is scrutinised and sanction given by the Governor while the alleged offence committed against a Minister is scrutinised and sanction

given by a Secretary to Government. What the Petitioner"s learned Counsel seems to suggest is that a person who has defamed a Minister is

discriminated adversely when compared to a person who has defamed any other public servant, in that the matter is scrutinised by the Governor in

the case of public servant, and by the Secretary or the Chief secretary to the Government who is a lower authority than the Governor, in the case

of Ministers. There does not appear to be any substance in this contention. The contention proceeds on an erroneous basis that the expression

"Governor "and the "Government" are synonymous and that the sanction given by the Government is on a higher footing than the sanction given by

the Chief Secretary or a Secretary to the Government. It is true, whenever a Minister is defamed, the matter of sanction has to be decided either

by the Chief Secretary or by the Secretary to Government specifically authorised in that behalf by the Government, and if a civil servant is

defamed, it is left to the Government, that is the Governor acting on the advice of his Council of Ministers. Under Clause (b) the chief Secretary or

a Secretary to Government specifically authorised has to give sanction in exercise of his independent judgment, while under Clause (c) the sanction

is to be given by the Government, that is, the Governor acting on the advice of his council of Ministers Clause (c) uses the word "Government" and

not the "Governor" Under Article 166(1). of the Constitution all executive action of the Government shall be expressed to be taken in the name of

the Governor. Therefore, it cannot be taken that wherever a statute entrusts a function to the Government that function is to be done only by the

Governor in his independent judgment as contended for by the learned Counsel for the Petitioner. Article 166(3) enables the Governor to make

rules for the more convenient transaction of the business of a State and for the allocation among Ministers of the said business in so far as it is not

business with respect to which the Governor is by or under the Constitution required to act in his discretion.

9. Therefore, in the matter of granting sanction under S 198-B(3), Crl. P.C, the Governor is not required to act in his independent judgment. The

sanction to be given by the Government under Clause (c) can, therefore, be by a person who has been authorised by the Government business

rules framed under Art, 166(3) of the Constitution. Though the order is to be made in the name of the Governor in view of Article 166(1), it can be

made and signed either by a Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary, or Assistant Secretary as per

Rule 12 of the Business Rules. Thus, the Petitioner's contention that the sanction given under Clause (c) is on a higher footing than the sanction

given under Clause (b) has no basis at all. The distinction between Clause (b) and Clause (c) lies in the fact that under Clause (b) the sanctioning

authority is the Chief Secretary or any Secretary to Government authorised in this behalf by the Government concerned and that in cases

coming(sic) in Clause (c) the sanction has to be given by any Secretary to Government without any specific authorisation by the Government,

treating the grant of sanction as a routine Government business. The complaint as to discrimination based under Article 14, therefore, fails.

10. The other contentions, as I have already said, are to be advanced before the court wherein the criminal cases are pending. Therefore I refrain

from expressing any view in relation thereto in these petitions. The writ petitions therefore fail and they are dismissed. There will, however, be no

order as to costs.