

In the Court of Principal Sessions Judge, Kanniyakumari District at Nagercoil.

Present : Thiru S. Arulmurugan, B.A., B.L.,  
Principal Sessions Judge.

Wednesday, the 22<sup>nd</sup> day of December, 2021.

CrI.M.P. No. 5753/2021

(CNR No.TNKK01-007358-2021)

and

CrI.M.P. No. 5805/2021

(CNR No.TNKK01-007412-2021)

G. Sivaraja Boopathy,

S/o. Ganesa Boopathy (A1) : Petitioner in CrI.M.P. No.5753/2021

C.M. Paulraj S/o. Chinnakkan (A2) : Petitioner in CrI.M.P. No.5805/2021

/Vs./

Inspector of Police,

Cyber Crime Police Station, Nagercoil,

Crime No.32/2021 of Cyber Crime Police Station, Nagercoil

Rep. by P.P. Nagercoil.

: Respondent

These two petitions are filed by Advocate Tvl. A. Maria Stephen and M. Ganesh respectively, u/s 438 Cr.P.C. praying to grant anticipatory bail to the petitioner in both petitions.

COMMON ORDER

Heard both side.

These two petitions are filed by the different accused, but in the same crime number.

The petitioners have been charged for the offence u/s 153, 505(ii) and 504 of IPC.

The case of prosecution is that the petitioner/A2 in his facebook account shared a message with a photo to his friends by stating that the demised Army CDS of India Bibin Ravath is a Fascist based on his earlier versions. Hence the charge.

The learned counsels for the petitioner in both petitions submitted that the informant is the Kanyakumari District President of BJP and the address cited in the FIR is his official District head quarters at Nagercoil and the petitioners/A1 and A2 are the practicing Advocates and the petitioners are “left ideological” oriented persons and the informant being a “right ideological” oriented person, so with a clandestine motive registered this FIR and the offence attributed in the FIR would not hold good even for a moment and the post created in the facebook account of the petitioners is on good faith and clearly a personal liberty guaranteed u/s 19(1)(a) of Indian Constitution and the gist of the message have circulated was published in India Today online news magazine dated 13.06.2017 in the caption of “Army Chief Bipin Rawat's Chemistry with controversy” and so nothing they did newly any one and this case is politically motivated case against the petitioners to curb their personal liberty and wreck vengeance and the petitioners are ready to abide by any condition and prayed for anticipatory bail to the petitioner in both petitions.

The learned Public Prosecutor opposed the application and submitted that after the sudden demise of the former Chief Of Defence Staff of Indian Armed Forces Mr. Bibin Rawat, the petitioners posted defamatory message in their face book

account as “பாசிஸ்டுகளின் கைக்கூலி சர்வாதிகாரி பிபினூக்காக கண்ணீர் சிந்துவது அவமானம் ” . The said statement creating provocation and such provocation will cause the offence of riot and creating or promoting enmity or hatred or ill will between the class of people as well as they intentionally with intent to provoke breach of peace and it is spread disharmony in the state and he has strong objection to grant anticipatory bail to the petitioners.

The arguments made by both sides were carefully considered by this court. The sections 153 and 504 of IPC are bailable in nature. It is Section 505(ii) IPC is the non bailable offence. A copy of FIR produced by the learned Public Prosecutor also perused. The disputed face book post made by the 1<sup>st</sup> accused also perused. It is the contention of the learned Public Prosecutor that the Face Book message made by A1 and A2 is insulting the former Chief of Defence Staff of the Indian Armed Forces as “பாசிஸ்டுகளின் கைக்கூலி சர்வாதிகாரி பிபினூக்காக கண்ணீர் சிந்துவது அவமானம் ” . Pointing out the said statement, it is the contention of the learned Public Prosecutor that, the statement is creating provocation and such provocation will cause the offence of riot and creating or promoting enmity or hatred or ill will between the class of people. Whereas it is the contention of the learned counsel for the petitioners/accused that the statement made by the A1 and A2 is nothing but a fair criticism of the deceased Chief of Defence Staff and the act of the petitioners/accused is safe guarded under Article 19 of the Constitution of India and the petitioners are entitled to made fair comment or criticism. The objection

raised by the learned Public Prosecutor is the words in the face book message i.e. “பாசிஸ்டுகளின் கைக்கவலி சர்வாதிகாரி பிபினுக்காக கண்ணீர் சிந்துவது அவமானம் ” The deceased Chief of Defence Staff was described as Fascist. The meaning of the word “ Fascist ” as per Mariam-Webster Dictionary is,

1. A political philosophy, movement or regime that exalts nation and often race above the individual and that stands for a centralized autocratic Government headed by a dictatorial leader, severe economic and social regimentation, and forcible suppression of opposition.
2. A tendency toward or actual exercise of strong autocratic or dictatorial control.

Therefore a mere using of the words Fascist and dictator will not attract any one of the Sections 153, 505(ii) and 504 of IPC. Therefore the words that the deceased Chief of the Defence Staff is a henchman of the Fascist and he is a dictator will not prima facie attracted any of the sections namely 153, 505(ii) and 504 of IPC.

The next words i.e. “ பிபினுக்காக கண்ணீர் சிந்துவது அவமானம் ”.

The said statement is nothing but an expression of an individual. According to A1 and A2, the shedding of tears for the death of Chief of the Defence Staff is insulting. In this connection the learned counsel for the petitioners/accused relied the recent Judgment of the Hon'ble Madurai Bench of Madras High Court in Crl.O.P. (MD) No. 19872/2021 and Crl.M.P.(MD) No. 11183/2021 in the case of *M.Maridoss /Vs./ State, represented by the Inspector of Police, CCD-III Police Station, Madurai City* in support of their case. A perusal of the Judgment shows that a case

was registered against the petitioner/accused in alleged offences u/s 124(A), 153(A), 504, 505(1)(b) and 505(2) of IPC. Aggrieved by the registration of the FIR against him, the petitioner/accused filed the above criminal petition to quash the FIR. After hearing both sides, the Hon'ble Madurai Bench of Madras High Court held at para 8,

“ Thus, as per the aforesaid decisions, in order to attract the offence of Section 504 IPC the accused must intentionally communicate an abuse or insult directly to the victim. In this case, the petitioner had sent a tweet which was meant for the consumption of his followers at large. Even according to the defacto complainant when he was casually surfing the social media, he came across the tweet by sheer chance. Section 504 of IPC is intended to cover only one to one interactions and not a case of this nature. ”

Here A1 and A2 made the alleged disputed statement in the face book. It was not made by them to the defacto complainant directly. Then in the para 12, the Hon'ble High Court held that,

“ The petitioner's tweet does not involve two groups at all. There is no reference to religion, race, place of birth, residence, language, caste or community. The Hon'ble Supreme Court had clearly held that unless one group is sought to be pitted against the other on the aforementioned grounds, the penal provisions are not at all attracted. It is on this ground, *Amish Devgan* Case relied on by the respondent is distinguishable. the religious element was so obvious in that case.

Even in the Hon'ble Supreme Court held that the question of intent would be relevant. The petitioner's intention is that the separatist tendencies must be nipped in the bud. Therefore the offences u/s 153(A) and 505 (2) of IPC are also not attracted.”

Therefore a perusal of the Judgment shows that in order to attract the offence u/s 153(A) and 505(2) of IPC, the statement must involve two groups and there must will be the reference about religion, race, place of birth, residence, language, caste or community. Here the disputed face book statement did not contain any of the said grounds. Under the circumstances, following the Judgment of the Hon'ble Madurai Bench of Madras High Court in M.Maridoss /Vs./ State, represented by the Inspector of Police, CCD-III Police Station, Madurai City, this court comes to the conclusion that there is no prima facie case is made against the petitioners/accused u/s 153, 505(ii) and 504 of IPC. Hence this court is inclined to grant anticipatory bail to the petitioners/accused with conditions.

In the result in the event of arrest or on their appearing before the court concerned the petitioners are ordered to be enlarged on anticipatory bail on their executing a bond for a sum of Rs.10,000/- with two sureties each for a likesum to the satisfaction of Judicial Magistrate No.II, Nagercoil subject to the following conditions:-

1. The petitioners shall appear before the court concerned within 15 days from today without fail.

2. After release, the petitioners shall also make themselves available before the respondent as and when required.
3. The petitioners shall not tamper with the witnesses or in any manner interfere with or put obstacle to the smooth progress of investigation.
4. The petitioners shall not leave the jurisdictional police limit without prior permission.

If there is any violation of condition, the Investigation Officer is with in his discretion to approach the court of the learned Judicial Magistrate for cancellation of bail even though bail granted by the Sessions Court as per the ruling of the Hon'ble Supreme Court reported in **P.K.Shaji /Vs./ State of Kerala, (2005) AIR S.C.W. 5560.**

Pronounced by me in open court this the 22<sup>nd</sup> day of December , 2021.

Sd/- S. Arulmurugan,  
Principal Sessions Judge.

To  
The Judicial Magistrate No.II, Nagercoil.  
The Inspector of Police, Cyber Crime Police Station, Nagercoil.  
The Public Prosecutor, Nagercoil.  
The counsel for the petitioner.