

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 05.04.2018**

**CORAM :**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**CrI. OP (MD)No.13285 of 2013**  
**and**  
**MP(MD)No.1 of 2013**

1.Karna

2.R.Lakshmipathy

3.R.Krishnamoorthy

... Petitioners

**Vs.**

M.Jothisorupan

... Respondent

**Prayer :** This Criminal Original Petition is filed Under Sectin 482 of Criminal Procedure Code to call for the records relating to proceedings in S.T.C.No.1789 of 2013 on the file of the Judicial Magistrate, Theni and quash the same.

For Petitioner : Mr.R.Venkateswaran

For Respondents : Mr.C.Jeganathan for  
M/s.Veera Associates

**ORDER**

One of the earliest stories that all of us have heard is “The Cap Seller and the Monkeys”. A cap seller was passing through a forest with a box full of caps. He got tired. He sat down

under a tree and slept. When he got up, he found the box open and almost all his caps missing. He was startled to find that the caps had been taken away by the monkeys who were wearing them. He wondered how to retrieve his caps. He thought for a while. It then struck him that if he threw the cap which he was wearing, on the ground, the monkeys also may follow suit. He threw his cap on the ground and the monkeys did likewise. This tale has been told from generation to generation to impress upon the children with the moral that one must use one's brain to get things done.

2. This tale furnished the theme for cartooning some developments in Dravida Munnetra Kalagham, a political party. Its leader Dr.M.Karunanidhi was portrayed as the cap seller while the party workers were shown as the monkeys. This cartoon published in Dinamalar issue dated 07.01.2013 gave rise to the impugned prosecution. The respondent who claims to be an ardent member of the said party alleges that there has been lowering of the reputation of the party workers in the eyes of the general public. The respondent lodged a private complaint before the Judicial Magistrate, Theni who took cognizance of the same and issued summons to the petitioners who are the

Cartoonist, Editor and Publisher of the said news daily.

3. Heard the learned counsel on either side.

4. A family of three committed self immolation in the premises of the Tirunelveli Collectorate last year. This gruesome and tragic incident provoked Cartoonist G.Bala to lampoon the District Collector, the Director General of Police and the Hon'ble Chief Minister of Tamil Nadu in the social media. They were portrayed as covering their private parts with rupee notes. The Cartoonist was arrested. Shri.M.K.Stalin, the leader of opposition and D.M.K. working president condemned the arrest saying that it was against the freedom of expression. This Court is of the view that the respondent herein should take inspiration from his leader.

5. Article 19(1)(a) of the Constitution of India embodying the fundamental right of the citizens to freedom of speech and expression includes within its scope to the cartoonists also. Of course, this is subject to the restrictions set out in Article 19(2). A Cartoonist does not have the license to defame. What is criminal defamation is defined in Section 499 of the Indian Penal

Code. But then, the standard set out in 499 of IPC cannot be applied in the same measure to all forms of freedom of speech and expression. This aspect can be easily explained by referring to the manner of application of the standard of cruelty in divorce cases.

6. In the decision reported in **(2006) 6 SCC 778 (Vinita Saxena vs Pankaj Pandit)** the Hon'ble Supreme Court held that the concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered. This judgment was approvingly cited and applied in the decision reported in **(2014) 7 SCC 640 (Malathi Ravi v. B.V. Ravi)**. The Hon'ble Supreme Court in the latter decision observed that mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual,

from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The concept of cruelty is one and the same in all cases. But, when it is applied, there cannot be a singular yardstick.

7.A cartoon is closely related to caricature. It implies a deliberate exaggeration intended to produce satirical effect. It is intrinsically a weapon of a ridicule. Webster's New Unabridged Twentieth Century Dictionary of the English Language defined caricature as "the deliberately distorted picturing or imitating of a person, literary style, etc. by exaggerating features or mannerisms for satirical effect." The appeal of the political cartoon or caricature is often based on exploitation of unfortunate physical traits or politically embarrassing events -- an exploitation often calculated to injure the feelings of the subject of the portrayal. The art of the cartoonist is often not reasoned or evenhanded, but slashing and one-sided. One cartoonist expressed the nature of the art in these words : "The political cartoon is a weapon of attack, of scorn and ridicule and

satire ; it is least effective when it tries to pat some politician on the back. It is usually as welcome as a bee sting, and is always controversial in some quarters.” It continuously goes beyond the bounds of good taste and conventional manners. (Opinion of Chief Justice William Rehnquist in ***Hustler Magazine Inc. v. Falwell, 485 U.S. 46 (1988)***). There is an early cartoon portraying Mr. George Washington, the father of U.S.A as an ass. In the very nature of things, a cartoonist is entitled to a greater latitude.

8.If the present cartoon is seen by a normal newspaper reader, he would simply laugh. In fact, the very object of the cartooning is to produce such an effect in the reader. No doubt, the party workers have been lampooned. But, they would definitely not come down in the esteem of the general public on this account. If the moral of the story is borne in mind, the cartoon would be seen as complimenting the party president for his sagacity. No doubt, law has to come to the rescue of a person who feels defamed. But then, law envisages a reasonable person and not a touchy and hyper-sensitive individual like the respondent.

9. When the Danish newspaper *Jyllands-Posten* published the caricatures of Prophet Mohammad, it gave rise to violent protests all over the world. In response, the United Nations organized in October 2006 a seminar titled "Cartooning for Peace-the Responsibility of Political Cartoonists". Shri. Kofi Annan, former United Nations Secretary General, while addressing the seminar stated that cartoonists have a special role in forming public opinion - because an image generally has a stronger, more direct impact on the brain than a sentence does. He however added "cartoonist can offend, and that is part of their point". Isabel Johnson commented in the year 1936 that controversy is the cartoonist's stuff of life, he starves in times of "brotherly love". Therefore, this Court is of the view that when applying the yardstick of defamation in the case of cartoons the threshold must be very high.

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10. In Tamil Nadu, there have been a number of celebrated cartoonists. Many of us grew up enjoying the cartoons of Madhan that appeared in Ananda Vikatan. The cartoons that appear in Thuglak continue to enrich our understanding of politics. The cartoons of Keshav and Surendra appearing in

'The Hindu' enliven our mornings. A cartoonist must be able to work without any inhibition. He should not be under any stress that his caricature would be followed by a criminal prosecution. Of course, this Court would not suggest that a cartoonist can do anything he pleases.

11. The Hon'ble Supreme Court has laid down the parameters of obscenity in ***Devidas Ramachandra Tuljapurkar v. State of Maharashtra (2015) 6 SCC 1***. The Hon'ble Supreme Court referred to a German cartoon portraying a well-known politician as a pig copulating with another pig dressed in judicial robes. It was observed by the German Court that where there was a conflict with human dignity, artistic freedom must always be subordinate to personality rights.

12. There is one more aspect of the matter. Section 499 of IPC has as many as nine exceptions. The third exception states that it is not a defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question. The respondent complainant has nowhere alleged that the petitioners have not acted in good faith. The cartoon in this case is pictorial representation of an issue of

public importance. There is nothing intrinsically defamatory in the said cartoon. In any event, it would certainly fall within the third exception.

13.A concluding thought. There is an underlying arrogance in this complaint. The Hon'ble Supreme Court in the decision reported in **(2014) 7 SCC 547 (Animal Welfare Board Of India vs A. Nagaraja & Ors)** referred to Article 51 A (g) of the Constitution of India which cast a fundamental duty on every citizen to have compassion for living creatures. All living creatures have inherent dignity. Human life, we often say, is not like animal existence. This view has anthropocentric bias. We forget the fact that animals have also got intrinsic worth and value. Now there is a slow but observable shift from the anthropocentric approach to a more nature's right centric approach in International Environmental Law and Animal Welfare Laws. In recent multinational instruments the intrinsic value of nature is asserted and there is a shift to non-anthropocentric human- independent terminology. Rights of animals have been recognized in various countries. Protection of animals has been guaranteed. The German Constitution talks of

“Animal Dignity”. Thus, the dignity of the animals is constitutionally recognised in that country. The Animal Welfare Act of Norway affirms that animals have an intrinsic value which is irrespective of the usable value they may have for man. Our Hon'ble Supreme Court announced in ringing terms that animals also have honour and dignity.

14. Apes are after all our primitive ancestors. They are our distant cousins. Our culture sees divinity in every aspect of nature. Hanuman, the monkey god is a hero as well as a venerated deity. Mahakavi Bharathi in his Papa Paatu calls upon us to love and take inspiration from birds and animals. Man occupies a higher spot in the evolutionary hierarchy. But, that does not make him superior to others. This is because, in the natural scheme of things, one is integrally linked to every other.

15. The impugned proceedings in S.T.C.No.1789 of 2013 on the file of the Judicial Magistrate, Theni are quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

**05.04.2018**

Index : Yes / No

Internet : Yes / No

*SKM*

To

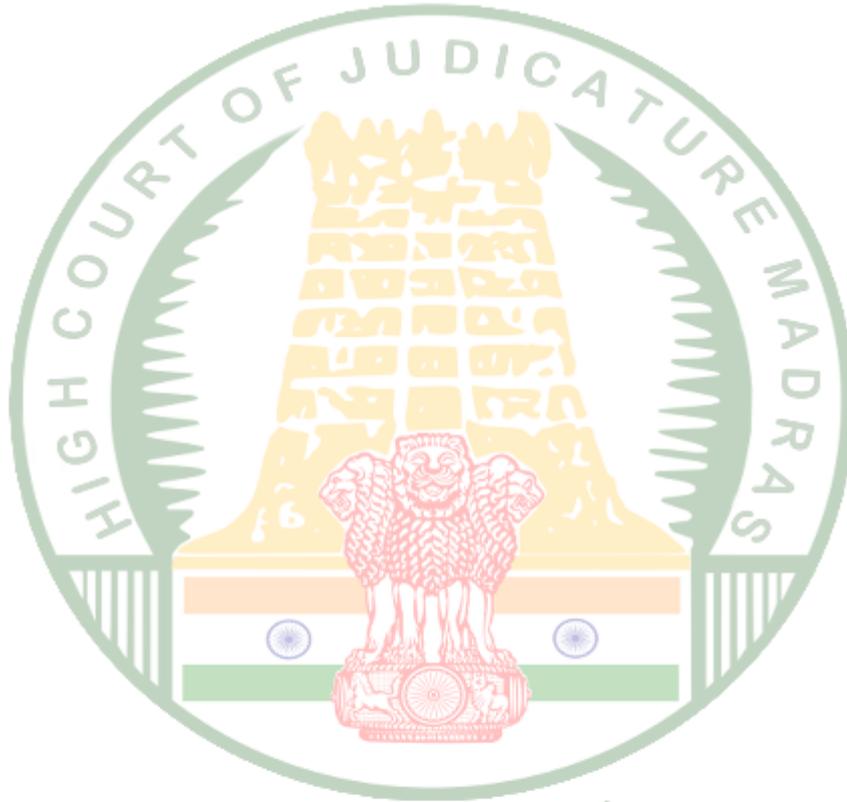
The Judicial Magistrate,  
Theni.



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**G.R.SWAMINATHAN, J.**

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