

S.Tamilselvan v. The Govt of Tamil Nadu.

W.P. No.1215 of 2015

Delivered on: 05/07/2015

Coram- The Hon'ble Mr. Sanjay Kishan Kaul, Chief Justice
The Hon'ble Mr. Justice Pushpa Sathyanarayana

By- Adv. Lakshmi Menon

FACTS

Perumal Murugan faced hostility from “a group of people” who alleged that “Madhorubagan” contained “dangerous and damaging materials”. The novel claimed, childless women were free to have intercourse with any male they chose to, in connection with Vaikasi car festival of the Ardhanareeshwarar temple and thus defamed women of the Vellalar Gounder community in Tamil Nadu, and the Ardhanareeshwarar temple and its car festival. It ended up in a serious law and order issue and forced the writer to declare that “the writer in him is dead”. Its members alleged such portrayal hurt the sentiments of that community and sought a ban on the novel for offensive and defamatory portrayal of women of their community. A state brokered peace meeting held between the author and those who opposed the novel before the District Revenue Officer, Namakkal bought about an agreement, with the writer tendering an unconditional apology against his free will. The issue also led to the filing of a volley of petitions, both for and against the writer. Petition has been filed under Art. 226 of Indian Constitution for issuance of writ of declaration of the decision of peace committee as null and void and also to issue guidelines for the respondent as to how state shall respond in situations where extra judicial organizations and individuals threaten the exercise of free speech by individuals and as a counter writ petition for issuing mandamus was filed seeking directions to be issued to the government to forfeit all copies of the book. Several criminal petitions were filed before the High Court for various offences under Indian Penal Code. The High Court invalidated the coercive “settlement” that the police had made Murugan sign, in order to pacify the various groups that were agitating against him. The Court simultaneously dismissed the plea to ban his book, and also dismissed the criminal complaints against him.

POINTS FOR DISCUSSION

1. Whether the said novel “Madhorubhagan” is to be banned on grounds of Obscenity, Defamation and Derogatory and hurtful to the religious sentiments?
2. What is the nature of state’s obligation to protect freedom of speech against non-state actors and whether it is properly exercised in this case?

CRITICAL ANALYSIS

Freedom of speech and expression is something without which no democratic society will grow. In India the same is protected under Article .19(1)(a) of the

Constitution. Discussions regarding right of speech and expression are to go side in side with discussions on the restrictions of the same. Article.19(2) of our constitution says about restrictions on speech and expression as “ Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”. What is speech and expression is a question that has no definite answer. It may vary from person to person and society to society. When we approach the high court judgment ,keeping in mind all the above said aspects, even though the judgment is, undoubtedly, for protecting freedom of speech and expression, it cannot said to be a well given precedent.

I propose to critically analyse the judgment by raising certain questions.

What is the line beyond which fictionalizing real people, events and institution takes the form of libel?

In this case the argument of the author that his book is a work of fiction is itself contradictory to his own statement given in the preface of the book. He says in the book that during his research he found people who were referred to as "god-given child" and "god's child". He writes: "I had presumed that they were called so simply because they had been born after prayers to the god. But during my search I chanced upon the connection between the temple festival and god's children". The place, temple and communities which are mentioned in his book are real. Above all he mixed up non- existing conventions with real existing rituals of the festival. So in my opinion the question whether the book is a work of fiction or is based on history or folklore is irrelevant at this context. The respondents challenged the same on the ground of defamation especially on the women folk. But from the judgment it is not clear that on what ground that argument is denied.

What are the basis of finding of the court that the novel was not obscene (*Section 292 of Indian Penal Code, 1860 (IPC)*), not offensive to the community (*Section 153A of IPC*) and the religion (*Section 295 of IPC*)?

After going through the judgment I am of the opinion that the interpretation given for the term obscenity is narrow and vague. Consideration of Ss. 153 A, 292 and 295 of IPC in the judgment is found to be non comprehensive. The judgment is silent with regard to the application of the contemporary community standards test of

tolerance to the instant case, otherwise than criticizing the community for its lower level of tolerance. The test itself is for determining the tolerance level of the society and not for insisting them to be more tolerant so as to fit the work in question to the standards of the society.

However the finding of the court that there was serious failure in the part of the state authorities in conducting the peace meet and the guidelines given to the authorities to deal with such peace initiatives is worth appreciating.

As stated earlier the concern of the court in protecting the artistic freedom is welcoming but it cannot be achieved merely by delivering a speech on democratic and liberal values without supplementing the same with constitutional or legal basis. A judgment which fails to give reason for the same cannot be said to have even persuasive value.

“Let the author be resurrected to what he is best at. Write”. But his pen is sharper than a sword. However it should not be afforded the authority to be epistemologically violent.