

(2009) 10 MAD CK 0315

Madras High Court

Case No: Criminal O.P. No's. 33757, 33881, 34416, 10367, 10524 and 10536/05, 4699, 7496, 7765, 17258, 150 and 720 of 2006 and Criminal R.C. No. 710 of 2006 and Miscellaneous Petition No's. 9552 of 2005 etc.

A.M. Rathinam, Perarasu and
Actor Vijai

APPELLANT

Vs

Sellapandian, B.A. B.L.

RESPONDENT

Date of Decision: Oct. 1, 2009

Acts Referred:

- Cinematograph Act, 1952 - Section 5(B)(1), 5(B)(2)
- Constitution of India, 1950 - Article 19(2)
- Penal Code, 1860 (IPC) - Section 499, 500

Hon'ble Judges: R. Regupathi, J

Bench: Single Bench

Advocate: V. Bhiman, for Sampathkumar Associates, for the Appellant; S. Prabakaran, for the Respondent

Judgement

R. Regupathi, J.

Alleging opprobrious visual artistic work designed against lawyers and legal profession in a Tamil movie called "Sivakasi", pocketful private complaints came to be filed against the Producer, Director and Actor of the movie before various Judicial Magistrate Courts in the State and to quash the proceedings set in motion on such complaints, the above petitions have been filed. Crl. R.C. No. 710 of 2006 has been filed challenging the order dated 15.06.2006 passed in Crl. M.P. No. 748 of 2006 in C.C. No. 335 of 2005 by the District Munsif cum Judicial Magistrate, Arcot, in and by which, the trial court rejected the plea of the petitioners to recall the non-bailable warrants issued against them. Since the Criminal Original Petitions and the Revision case are interconnected, they are disposed of by this Common Judgment.

2. The allegation in one of the private complaints (pertaining to Crl. O.P. No. 33757 of 2005) is that on 16.11.2005 the respondent, an Advocate by profession, went to a

Theatre at Thiruthuraipoondi along with his friends to watch the movie titled "Sivakasi" and, in the said movie, the legal profession is scornfully ridiculed through an artist appearing in an unusual background of being present in the attire of advocate at tea stalls and platform with a Board hanging "cases of pick pocketing, chain snatching and teasing consulted here". Further, wherever the artist appears in the role of advocate, the profession is belittled extremely and the respondent, being an advocate, felt very much ashamed on account of the projections made about the legal profession and lawyers and, while leaving the theatre, his friends mocked at him on account of the impact of the movie, therefore, the petitioners, in their respective capacities as Producer, Director and Actor are liable to be proceeded against for offences under Sections 499 and 500 IPC.

3. Initially, by way of arguments, it was submitted by the learned Counsel for the petitioners that the one and only purpose behind production of the movie was to entertain the viewers and the scenes in question were in no way intended to offend, wound or nettle the feelings of anyone including the legal fraternity, for, in the inception itself, the message depicted is that the characters appearing in the movie are apocryphal and suppositious; that immediately after coming to know that certain scenes were sensed to be objectionable and targeted at the legal profession, instantly those scenes were removed, thereby the petitioners made it clear that they did not actually intend what later was magnified as a big issue; and that, even on legal aspect, mens rea from the inception is totally absent in the case and further, though the affected class of persons, according to the complainant, generally refers to lawyers in view of the alleged projections in the movie, actually such aggrieved persons not being a determinable class of individuals, there is no legal basis for taking cognizance of the complaints.

3-A. Per contra, learned Counsel for the respondents, representing various Bar-Advocate Associations, in his vigorous endeavor to demonstrate that prima facie, the alleged offences are made out and that the movie in question was produced only with the sole purpose and intention to defame and sell short the lawyers and legal profession, by referring to the presentation in a classical movie called "Gauravam" wherein the profession was hailed and exhibited in good faith having regard to its standards and glory, submitted that repulsive, reprehensible and pejorative comments have been made throughout the movie wherever the artist in the attire of lawyer appears and any reasonable commoner, after viewing the movie, would have only a negative impression and wrong conclusion as if lawyers are at the door-steps of thieves and robbers to take care of their case and cause. In the name of entertainment and artistic performance, a dangerous, unstoppable and uncontrollable trend is prevailing and even right minds are corrupted and polluted by the cine industry through production of films like the present ones. It is not correct to say that, after coming to know about the clamor and roar in the circles of legal fraternity on account of the defamatory scenes contained in the movie against them, the objectionable scenes were elided

immediately. The present one is an illustrious case where the petitioners cannot take shelter under any of the Exceptions adumbrated in Section 499 IPC. A bare view of the movie coupled with the materials available on record would clearly establish that a prima facie case is made out against the petitioners; hence, the petitions may be dismissed.

4. After completion of arguments, it was submitted before this Court that though the contents in question were not intentional, deliberate, contrived and calculated, yet, the petitioners, out of their regard and utmost respect for legal profession and its practitioners, intend to tender apology, thereby the matter may also be given quietus, and a request was made for adjournment, hence, the matter was listed on 05.08.2009, and the petitioners, by filing separate affidavits, expressed their regret and tendered apologies and requested the court to allow the petitions by recording their statements of apology in the respective affidavits.

5. Though affidavits tendering apology have been filed before this Court; since arguments have been advanced touching legal aspects and it was stated that the magnitude of the actual artistic work has its adverse impact against the legal fraternity in the societal spectrum, I am of the view that, while disposing of the petitions of course in the light of the affidavits now filed, it is all the more necessary to make certain observations so that such tart instances do not recur in future.

6. The basic and essential ingredient/element that must be present for taking cognizance of a complaint u/s 499 IPC is disclosure of a cause of action, for, evidence could be allowed to be let in only for the purpose of substantiating the allegations and the cause of action made out in the complaint and further, the defamatory matter is actionable, if on evidence, it can be established that the defamation/imputation was directed towards a particular person or persons who can be identified as "person/s aggrieved" and the test for ascertaining "person/s aggrieved" is that the imputation must be against the complainant/s personally or must be aimed at him/them. In cases where the aggrieved persons are a group of individuals, the settled legal position is that, if a well-defined class is defamed, every person of that class can file a complaint even if the defamatory imputation in question does not mention him by name and that the defamatory material/words/work would reasonably lead people acquainted with him to the conclusion that he was the person actually referred to. The relevant factor that would be weighed is proof of intention, knowledge or reasonable belief on the part of the accused as to the possible harm to the reputation of the person concerned. Whether harm was actually caused or not is immaterial. If the essential ingredients attracting the offence alleged are present, there would be no difficulty in proceeding with the cases else, taking the same on file, is a futile and unwarranted exercise. Though the legal aspect is pointed out, it is not necessary to delve into the same for the purpose of testing the present cases, since a plea has been made for disposal of the petitions based on the affidavits now filed.

7. In the cases on hand, the alleged artistic works are parts of a movie and though the film initially released was carrying such contents, later, realizing the fact that the legal profession was to a considerable extent degraded through such presentation and thereby, image of the legal practitioners is lowered in the vision of the viewers of the movie, the objectionable scenes have been removed and the petitioners, feeling penitent, have filed separate affidavits tendering apology and requested to accept such apology. Learned Counsel for the respondent, representing various Bar Associations got impleaded in the cases, submitted that though they are willing to adopt an altruistic approach, this Court may, while recording such apology tendered, appropriately deal with the issue taking note of swift march of the film industry on risky tracks to derail the society treading with moral, ethical and cultural values.

8. It is pertinent to recall here that, during freedom struggle, with great sense of patriotism, large number of lawyers sacrificed their lucrative legal practice and jumped into the fray to free the nation from the mighty British Rule. The Father of the Nation, First Governor General, First Prime Minister and First President of our country were all from legal profession. Many Social reforms legislation came to be enacted when the Parliament was adorned by large number of elite lawyers. The participation and contribution of lawyers in freedom struggle, in the field of politics during the hysterical years preceding independence, in evolving and formulating state policy and shaping the constitution immediately after independence and importantly, in development of law under the Constitution during the last several decades undoubtedly is a matter of glory for the profession and it also reflects the cherished traditions and high standards set for itself by the lawyers' community.

9. In the present day scenario also, lawyers are viewed as instruments and agency through which the society can have access to justice as their work is totally dedicated to the interest of the society, that is why, they cannot be termed merely as professionals. The description given by the Apex Court in *Ramon Services Pvt. Ltd. v. Subhash Kapoor* 2001 (1) SCC 118 as to the role of legal profession is worthy of mentioning here, "Persons belonging to the legal profession are concededly the elite of the society. They have always been in the vanguard of progress and development of not only law but the polity as a whole. Citizenry looks at them with hope and expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of mankind. The lawyers, who have been acknowledged as being sober, task-oriented, professionally responsible stratum of the population, are further obliged to utilize their skills for socio-political modernization of the country. The lawyers are a force for the perseverance and strengthening of constitutional Government as they are guardians of the modern legal system." Judiciary cannot discharge its duties in the administration of justice without active participation and involvement of the Bar. Therefore, such a noble

profession should be looked at with due regard and respect it commands and picturing the same and projecting its practitioners in a deriding and degrading manner cannot be taken as a usual phenomenon in the area of entertainment.

10. No doubt, a professional or a group of persons engaged in a particular field are at liberty and has the privilege to create and present their works and exhibit the artistic presentations in the own stream of their imagination. Art is an anthropocentric, recreating reality in terms of needs of the human psyche with its role to make people feel personally involved; thus, it has a particularly strong influence on mental equilibrium. Criticism is a field which brings out the meaning behind a work of art and it facilitates communication between the artists and the public, that is why, when criticism is made through the artistic work itself that too visual medium, it should be reasonable, restrained, logical, sound and free from prejudice and malice. Biased and baseless criticism painted to be a reality, when absorbed by the public particularly from a visual artistic work, would have unwanted impact and consequences, therefore, one must be sure-footed and careful, otherwise, a wrong message would be received and much prejudice would result to the person who or whose profession is given a wrong projection.

11. Every citizen has the right to pursue his own profession, which is not harmful to the society and prohibited by law, but such right should not be used as a tool to belittle the values of other professions. One may not and cannot expect or insist upon that the profession or career he practices or the work done by him should be extolled by others but definitely, no one would accept his profession being ridiculed or subjected to mockery by persons embracing other professions. Such practice can, at best, be termed as "professional invasion" and loosely ,in law, it can be said "technical imputation". If this invasive trend is allowed to continue, it would cause havoc upsetting the social order and razing to ground the moral values and ethical considerations and mutuality prevailing amongst persons practising various professions.

The artistic activity, particularly in movies and motion films, depends to a great extent on the attitude adopted towards them by the society in which they are rooted and many in the modern society are readily accepting and reacting to what has been conveyed to them through such medium. In such a situation, of late, it is irritating to note that corruptive, pointless and irresponsible messages are being conveyed through movies in the name of entertainment. Instead of working towards promoting ethical, moral, personal and social values, movies are produced to make rifts in the society, demoralize the younger generation, destroy the family morale and in some cases, crime and criminal activities are hailed. Instances are numerous where, influenced by the corrupt and dangerous ideas borrowed from such type of movies, heinous crimes were committed and from the magnitude of the offences, the extent of influence received by the individual could be measured. Therefore, the professionals belonging to film industry should not think that they

are beyond restriction and they can exhibit whatever they wish in line with their imagination and creativity and, in objectionable matters, by just presenting the inceptive slots of "fictitious characters", they cannot wriggle out from social obligations and legal consequences that would follow. The film industry too has social and moral responsibilities and it is expected that they produce good and healthy artistic materials for the public with whose contributions and reciprocations the industry is surviving and that they would not, by their artistic works, corrupt or pollute the minds of the public and tear the fine fabric of co-existence of different sections of people and set of professions based on good-will and better understanding.

It must also be taken note of that parallel to cinema and movies screened in theatres, the other side of the spectrum which has dominated the houses of the society is the mini screen called television through which movies, documentaries, serials, songs, music and dance programs etc. are televised ceaselessly and major part of such works are said to be filled with contents of obscene nature, licentious conduct, vulgar slang, violent scenes, supernatural and superstitious works to kindle anxiety and fear to cause emotional disturbance and hysteria. In the name of comedy show, joke cutting, mind-reading, numerology, spiritualism and reality shows, professions are ridiculed, personal targeting is done, normal persons are made psychologically upset, extra marital affairs are hailed and personal and private lives of individuals are intruded and exposed to gain popularity for the particular channel and to the disgrace and scorn of the individuals concerned. One channel airs a program of a medical professional who is praised to be a "no match" in the field while another channel airs a news item in which the "giant" is revealed to be a pseudo medic. The most dangerous trend is, there are certain channels which exclusively air music and fashion programs with semi-nudity and mature contents and kids and school going children who have free hands over remotes get access to such channels and their character and psychology is hardened at tender age and in these odd times, it is feared that good behavior, human values and moral standards would be stripped away forever from the youth. The argument of the channels which air such materials is that censorship should be enforced with the video-makers and not the channels televising the materials. In such a critical situation, clear and stringent censorship guidelines for TV programs also must be laid down.

It seems that the Central Government by its notification dated 2nd August, 2006 ordered that no film, film promo, trailer, song, music video or album should be carried in TV channels unless they are certified by the Board of Film Certification, however, the trend continues to be the same. Therefore, the need of the hour is, apart from scrutiny of the films, there should also be close monitoring of the TV programs so as to check lapses and instantly initiate steps against the transgressors and for such purpose, the governing body should be powerful, unbiased and mindful of its role and responsibility as a designated moral guardian of the society.

12. In our system, we have two units viz., certifying agency (CBFC/Censor Board) and enforcing authority (District Collector, police etc.). Press and electronic Media and Cine Industry derive the freedom of speech and expression i.e., they have the right to express opinions by words, picture, writing, documentaries, movies etc. but such right is purely subject to the "reasonable restrictions" set out in Article 19(2) of the Constitution for ensuring that such freedom is not misused. Since the artistic products through visual medium have stronger influence on the viewers and the same penetrate deeper into the mindset compared to other mediums, it was felt that censorship of the films and certification of the same are necessary, as a result of which, Central Board of Film Certification, also called Censor Board, came to be set up and the guidelines for its functioning are prescribed under the Cinematograph Act, 1952. The Board also has its regional offices in many cities including Chennai. Section 5(B)(2) of the Act prescribes that, in addition to the general guidelines outlined in Section 5(B)(1) to the effect that a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence, the Government may issue such directions as it may think fit, setting out the principles which shall guide the authority competent to grant certificates under the Act in sanctioning films for public exhibition, having regard to the changes in social outlook and also the nature of films that are produced; thereby, the scheme of the Act is made clear that though the job of certification of films is a central subject, the state governments may have to enforce the censorship provisions and bring to the notice of the Central Board any violation in the presentation.

With reference to censorship of films, the Apex Court also held repeatedly that such exercise is necessary, for, a film motivates thought and action and assures a high degree of attention and retention of the sight and sound in the semi-darkness of the theater with elimination of all distracting ideas and this would have a strong impact on the minds of the viewers and can affect emotions; therefore, it has as much potential for evil as it has for good and has equal potential to instill or cultivate violent or good behavior.

13. Of late, having regard to the prevalent scenario, the question raised by one and all is, whether the designated authority/Censor Board is in fact functional. If the filter itself is worn out, how purity can be expected in the outcome. The members of the Censor Board should be alive to their responsibilities and duly perform the functions for which they are holding the office. They should not leave room for a stigma by their inaction that the Board is accessible and their functioning is ceremonial and not actual. To make the Board execute its tasks effectively, apart from being particular in appointing persons who have societal concern and judicial background as Chairman and members of the Board, the Government must engineer effective mechanism so that the Board could not only scan the programs

intended to be presented to the society but, in appropriate cases, also possess automatic powers to initiate proceedings instantly before a court of law against the regular offenders and to ensure that the artistic works presented to the society through cine field and mini screen are free from contents promoting ill-will and hatred amongst different sections of the society, obscenity, malice towards persons practicing other professions, child and women abuse etc.

In such view of the matter and the exigency arisen, irrespective of the provisions available, it is avowedly expected that the Government of India may take suitable steps to device effective legal mechanism in respect of screening/broadcasting through cinema and television so as to make the certifying agency more effective in filtering the artistic works, graphics and programs meant for screening and televising to be family oriented and free from derogatory ,defamatory, evil, lewd, misleading ,malicious, obscene and slanderous contents. A law without force is a naught. Therefore, in the interest of the society as a whole, the Central Government may make suitable amendments to the existing Cinematograph Act and Cable Television Networks (Regulation) Act, 1995, giving wide powers to the State Level Agencies and authorities so that actual implementation is materialised. The Secretary to the Government of India, Ministry of Information and Broadcasting, New Delhi, may co-ordinate with the authorities of the State to work out a viable scheme to exercise effective control over cine, small screen and internet broadcasting materials. Simultaneously, the Government of Tamil Nadu may also strike the whip so that the authorities concerned may exercise effective monitoring over theatres screening the movies and the local private channels which have no control hitherto in transmission of programs in violation of the Act and Rules in order to contain and curb the menace of the society being polluted.

14. Now, coming to the affidavits filed by the petitioners tendering apology, since the respondents representing various Bar Associations have no objection for disposal of the cases on the basis of those affidavits, I am of the view that, in the peculiar facts and circumstances involved in the present cases, the petitions may be ordered, quashing the proceedings, of course, with an admonition to the petitioners that, in the name of entertainment and amusement, such profane projections should not recur in their future artistic works. The affidavits shall form part of the records.

15. In the result, the petitions are allowed and the proceedings against the petitioners before the courts below are quashed. Consequently, Crl. R.C. No. 710 of 2006 seeking to recall the non-bailable warrants issued against the petitioners stands closed. Connected Miscellaneous Petitions are also closed.