

Perumal Murugan v. Government of Tamil Nadu

Madras High Court July 2016

W.P. No.1215 of 2015

...this writ petition was filed by the General Secretary of the People's Union for Civil Liberties (PUCL), Tamil Nadu and Puducherry, in public interest, in the light of what had transpired aforesaid, alleging that extrajudicial and non-State players had taken law into their hands and launched a virulent campaign demanding the withdrawal of the novel "Madhorubagan" by Prof. Perumal Murugan. While it was expected that the official respondents would give adequate protection to the author and protect his right to free speech, they are alleged to have succumbed to the illegal demands of the extra-judicial bodies and coerced the author into signing the agreement dated 12.1.2015, whereby he agreed to withdraw all unsold copies of the novel, yet while tendering an unconditional apology. The scope of this writ petition was also sought to be expanded, not only to quash the Agreement dated 12.1.2015 which is alleged to have been obtained under perceived threats to the author, but also to issue appropriate directions to the respondents by framing guidelines as to how the State agencies or officials should respond and act in situations where extra-judicial organisations/individuals threaten the exercise of free speech by individuals.

[The opposition to the novel] is that the author, in his aforementioned novelised history, names real places Tiruchengode, Arthanareeswarar Temple and the associated festivities, relating it with unreal sexual orgy. The novel is said to contain minute details about the festival and the area in question, and the narrative is built up by stating that almost all the married womenfolk in Tiruchengode indulge in sexual orgies with men outside their wedlock and childless women get impregnated from such one night orgies. The author refers to the womenfolk of the town by their caste name, Kongu Vellala Gounders who are predominant in the area and thus creates a slur on that caste by projecting them as prostitutes. The 14 th day car festival of the Arthaneeswarar Temple is stated to be a once in a year opportunity for youths of that region to explore their libidos and orchestrate it on a maximum number of women who are aged above 30 years. Thus, the author is alleged to have projected the famous car festival of Tiruchengode Arthaneeswarar Temple as a free-for-all sex festival, thereby denigrating the festival and hurting the religious sentiments of the people. The novel is stated to inform that majority of such youths are from the Scheduled Caste community who have no responsibility and that they disappear after the event. These youths are also stated to be boasting among their friends as to how many of women they had sex with on the 14 th day of the car festival.

The novel in question is stated to be replete with obscenities and vituperative vulgarity. In particular, reference has been made to Chapter XIV of the Tamil Edition of the novel at pages 86 and 87 describing that sexual unions take place in the Hill Temple Mandapam, in the corners of the village streets and that it is a common sight to see men and women mating with each other and their bodies lying mating everywhere. The author is stated to have narrated that after evening hours, one could see copulating bodies of men and women in the four car streets (naangu ratha veethi), in the empty land outside the town, in the corners of the rocks

and everywhere, under the cover of darkness. The author is thus stated to be projecting through his novel that such immoral, extra-marital sexual orgies take place everywhere in and around Tiruchengode town on the particular day.

32. Another specific reference is made to page 115 of the novel which to the effect that it is not unusual for womenfolk of that region to be conceived by men other than their husbands. Thus, what is believed to be God's blessings ushered in the form of children are sought to be labelled by the author as progenies of sexual orgy rituals carried on during the 14th day of the car festival in the Arthanareeswarar Temple, thereby giving a completely different interpretation to the pious expression of religious belief. This novelised history is thus stated to create a social ridicule about childless parents begetting a child owing to the veneration and blessing of the Almighty of the temple. In fact, it is suggestive of there being nothing licentious about sexual relationships carried outside marital matrimony, and such things are depicted to have been existed as a custom from time immemorial, and womenfolk who underwent these sexual orgies were expected to consider their sexual partners as God himself.

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48. The overall impression of a reading of the book, contend the opponents, undermined the reputation of womenfolk of the Kongu Region as immoral and promiscuous in nature, as if children born in that region in the 1940s are bastards.

50. A ban of the novel is thus sought on three primary grounds – (i) Obscenity; (ii) Defamation; and (iii) Derogatory and hurtful to the religious sentiments of the Hindus.

Legal Position 106. A large number of judgments on different legal principles were referred to. These are in the context of the right of expression vis-à-vis the State's duty to protect it, what constitutes obscenity, the right guaranteed to individuals under Article 21 of the Constitution and also about the existence of illegal courts in the form of 'Katta Panchayats'. In order to avoid prolixity, we are referring to these citations below under different heads with just the crux of the case and the principle of law laid down therein, along with the plea propounded on the basis of these judgments :-

I. FREEDOM OF SPEECH & EXPRESSION

(A) *Freedom of Expression & Duty of the State to protect Rights*

- 1) *S. Rangarajan vs. P. Jagjivan Ram*, (1989) 2 S.C.C. 574 The case related to the revocation of the 'U Certificate' granted to the film 'Ore Oru Gramathile', which was an anti-reservation film. There were protests against this film. It was held therein that the effect of the so called offending words must be judged from the standards of reasonable, strong minded, firm and courageous men and not those of weak and vacillating minds. It was further held that the State cannot plead its inability to handle the problem of hostile audience. It is its obligatory duty to prevent it and protect the freedom of expression.
- 2) *P rakash Jha Productions vs. U nion of India*, (2011) 8 S.C.C 372 This case involved the suspension of the Hindi film 'Aarakshan' by the State of Uttar Pradesh even after the Censor Certificate was issued on grounds that it would cause a 'law and order' issue. The Supreme Court held that the film was to be allowed to be screened. 'Law and order' maintenance was the duty of the State. The Court held that it is the duty of the State to maintain law and order and therefore, the State shall maintain it effectively and potentially.
- 3) *Sri shti School of Art, Design & Technology vs . Cha irperson, Ce ntral Board of Film Certification*, 2 011 (123) D.R.J. In this case, the makers of the documentary called 'Had Anhad' were asked to carry out cuts, which the petitioner protested against. It was held that the cuts proposed were violative of the petitioner's right to free speech and expression and was allowed. The Court observed that the Indian Constitution provides a democratic space to voice views unacceptable to others but for the reason it is unacceptable, it cannot be prevented from being expressed. It was thus held that a book must be read as a whole and the context must not be ignored and it is reasonable to see what would be the reaction of a common reader.
- 4) *L YCA Productions Pvt Ltd vs. G overnment of Tamil Nadu*, 2014 S.C.C. Online Mad. 1448 In this case, the producers of the popular Tamil commercial feature film 'Kathi' were Sri Lankans and the film was objected to owing to the nationality of its producers. They were forced to sign an agreement to remove their names from the movie hoardings, which the police attempted to enforce against them. This Court held agreement not valid and cannot be enforced. It was observed that the letter of undertaking cannot be relied upon by the Police, which cannot grant a seal of approval to such letters of undertaking, as the same tantamounts to the creation of a super-censor Board. It was further observed that the police should not permit attempts of such blackmails to succeed, which if allowed, would automatically lead to extortion and the surrender of power of governance and the rule of law to a few intolerant people.
- 5) *Ajay Gautam vs. Union of India*, 2015 S.C.C. Online Del 6479 The movie 'PK' was sought to be banned on the grounds that it hurt the religious sentiments of the Hindus and violated the rights of the Hindus under Article 19(2). Holding that no one is captive audience and it is a conscious choice of a viewer, who is free to avoid watching the film, the case was dismissed.
- 6) *S. Khushboo vs. Kanniammal*, 2010 (5) S.C.C. 600 This case pertained to the quashing of cases filed against the petitioner for remarks made by her on pre-marital sex. This Court observed that a culture of responsible reading is to be inculcated amongst the prudent readers. Morality and criminality are far from being co-extensive. An expression of opinion in favour of nondogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalize the author.
- 7) *Sony Pictures vs. State*, 2006 3 L.W. 728 In this case, the ban imposed by the State of Tamil Nadu on the English film 'The Da Vinci Code' was challenged. A learned single Judge of this Court observed that when the State has a duty to

prevent all threats of demonstrations and processions which amount to intimidating the right of freedom of expression, it cannot plead its inability to handle breach of peace if and when it arises. The order imposing the ban on the film was thus quashed.

(B) FREEDOM OF EXPRESSION & OBSCENITY 1) K.A. Abbas vs. Union of India, (1970) 2 S.C.C. 780 The case related to the documentary 'A tale of 4 cities', which was not given 'U' Certificate, against which the writ petition was filed challenged. It was held that pre-censorship was correct as per the Constitution. The Court observed that standards of obscenity must not be at the level of the most depraved to determine what is morally healthy for a normal person. It is not the elements of rape, leprosy and other social problems that should be censored, it is the manner in which such themes are handled. 2) Maqbool Fida Hussain vs. Rajkumar Pandey, 2008 Cr. L.J.4107 This case, which was decided by one of us (S.K. Kaul, C.J.), related to private complaints filed against the noted painter M.F. Hussain for allegedly vilifying Hindu Gods and Goddesses through his art work. It was observed therein, quoting with approval the ratio of Samresh Bose vs. Amal Mitra (1985) 4 SCC 289, that for the purposes of judging obscenity, the judge must first place himself in the shoes of the author in order to appreciate what the author really wishes to convey, and thereafter, he must place himself in that position of the reader of every age group in whose hands the book may fall and then arrive at a dispassionate conclusion. The complaints were thus quashed. 3) Nandini Tiwari vs. Union of India, 2014 S.C.C. Online Del. 4662 This case involved a writ petition filed to ban the Hindi film 'Finding Fanny' for using the word Fanny. The writ petition was dismissed observing that obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. It was held that if a reference to sex by itself is considered to be obscene and not fit to be read by adolescents, the adolescents will not be in a position to read any novel and will have to read books which are purely religious.

(C) OBLIGATION OF STATE TO PROTECT RIGHTS OF INDIVIDUAL UNDER ARTICLE 21 1) NHRC vs. State of Arunachal Pradesh, (1996) 1 S.C.C. 742 This case challenged the threats doled out to the Chakma refugees settled in Arunachal Pradesh by the local tribes to leave the State. The Court held that the State had a duty to protect the rights of the Chakmas. The Court observed that the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise, and it cannot permit anybody or group of persons to threaten. It was also held that the State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being without being inhibited by local politics. 2) Bhajan Kaur vs. Delhi, (1996) S.C.C. Online Del. 484 In this case, the petitioner's husband was murdered in the 1984 riots. The compensation of Rs.20,000/- given was challenged as being inadequate. It was held that the duty and responsibility of the State was to secure and safeguard the life and liberty of an individual from mob violence and that the State and its functionaries were expected to evolve mechanisms to protect the life and liberty of individuals under Article 21.

(D) KATTA PANCHAYATS 1) K. Gopal vs. State of Tamil Nadu, (2005) 4 C.T.C. 241 This was a Public Interest Litigation filed regarding the functioning of katta panchayats in Tamil Nadu, wherein this Court observed that people can form voluntary organisations but they cannot

take the law into their own hands or the sovereign functions of the State. 2) Indian woman says gang-raped on orders of Village Court, (2014) 4 S.C.C. 786 In this case, the Supreme Court took suo motu action upon reading about the gang rape ordered by a kangaroo court against a woman, who wished to marry outside the community. Referring to the decision in Arumuga Servai vs. State of Tamil Nadu, (2011) 6 SCC 405, the Court observed that the effect of Khap Panchayats (known as Katta Panchayats in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way were required to be ruthlessly stamped out as encouraging acts of barbarism and feudal mentality. The question thus which required to be posed is whether the State police machinery could have possibly prevent such an occurrence and if the answer is yes, then the State is duty bound to protect the fundamental rights of its citizens, an inherent aspect of Article 21 of the Constitution of India.

(E) BANNING OF BOOKS UNDER SECTIONS 95 AND 96, Cr.P.C. 1) Uttar Pradesh vs. Lalai Singh Yadav, A.I.R. 1997 S.C. 202 In this case, the book “Ramayan – A True Reading” written by EVR Periyar was banned by the State of Uttar Pradesh without any reason. This was challenged. It was held that the Government had to necessarily state reasons for banning a book. The Court observed that the constitutional rapport between the penal Section 99A of IPC and the fundamental right under Article 19 was emphasized. It was held that the triple facets of a valid order banning a book are : (i) that the book or document contains any matter; (ii) such matter promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of India; and (iii) a statement of the grounds of Government's opinion. The Court observed that if the Government itself cannot invoke the power under Section 99-A IPC, how can a group of self-serving persons decide to use their number power to achieve what is not permissible even under the provisions of law? 2) Raj Kapoor vs. Laxman, A.I.R. 1980 S.C. 605 This case concerned the film “Satyam Shivam Sundaram”, and a case was filed under Section 292, IPC concerning its title, which the Court ultimately quashed. 3) State of Maharashtra vs. Sangharaj Damodhar Rupawate, (2010) 7 S.C.C. 398 This was an appeal challenging the order of the High Court striking down the Notification of Maharashtra Govt banning and forfeiting the book “Shivaji – Hindu King in Islamic India”. In this case, the Supreme Court laid down the legal aspects that have to be kept in mind while examining the validity of a notification in such matters.

109. A book is the literary expression of an author. A painter paints his thoughts; a sculptor expresses his thoughts through his murals; an author writes. The first two are simple expressions of a mixed set of thoughts and have to be observed in that manner. The aspect of a painting was dealt with by one of us (Sanjay Kishan Kaul, J.) in M.F. Hussain's case (supra), which also received the imprimatur of the Supreme Court by dismissal of S.L.P. (Criminal) No.6287 of 2008 on 8.9.2008. A book is definitely a more detailed and expressive method of setting forth one's thoughts. It is not a single expression. It weaves a theme. Thus, while judging a book on any parameter not necessarily restricted to obscenity, it has to be read, digested and examined as a whole. Thus, a book is not to be read like a statute to come to a conclusion. Sentences cannot be picked up here and there to give a conclusion. 110. We also note that the language deployed in books may vary from more sophisticated versions with polished language being used to a more colonial and crass local dialect. There are, of

course, boundaries qua use of an abusive language. But then the realities are harsh – they are not a bed of roses. Thus, when a book deals with certain social aspects like the suffering of women or the socially and economically weaker sections of the society and their travails, they may tend to seem harsh. Similarly, even in cinematographic representations, the reality at times has to be portrayed in such a manner that it may shock the viewer, in order to send the message across. 111. We are faced with a delicate situation of a book raising social issues. Has it crossed the boundaries? In deciding the weight of the balance between what may be construed as ‘morality’ and ‘artistic creativity and expression’, one walks on ice. Are even the travails of a childless couple dealing with social stigma in the context of socially and economically backwardness to be represented in a more “decent” way? Does the story bear any semblance to what is the ground reality or is it a figment of imagination of the author? In this context, what would be the difference between a historical book and a novel.

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136. How to test obscenity? A common test which can be followed is that – (a) a book when read as a whole appears lascivious or raises lustful thoughts or desire; and (b) when the book contains no literary, artistic, political or scientific value. No doubt, the burden to prove the same is on the party seeking a ban. There are many occasions where the State has intervened by banning a book. It is clearly not so in the present case. ‘Decency’ and ‘obscenity’ are relative terms. Would it be desirable for the Courts to intervene or should it be left to the readers to learn for themselves what they think and feel of the issue in question? There are

often challenges raised with good intentions, including keeping it away from the reach of children. But it may not be in its entirety. One may look at cinematographic representations where films are categorized by the age profile which is permitted to watch it. In that sense, there appears to be no such procedure for books.

137. The storyline of the novel sets out the travails of a childless couple and the alleged practices in Tiruchengode in earlier periods of time, over which objections have been raised. The family members of the protagonists conspire to create a situation where Ponna, who is married to Kali and does not have any progeny, is induced to participate in the 14th day rituals of the temple car festival with the object of producing a child known as “Gift of God”. This is against the will of the husband Kali. This so called sexual permissiveness lies at the root of the agitation seeking to ban the novel and the protests held against it alleging that a story of sexual orgy between a childless woman and a youth has been projected as a practice being followed on the 14th day of the car festival that takes place in the Arulmighu Arthaneswarar Temple at Tiruchengode. The grievance is that the novel actually speaks about the anachronistic ritual allegedly practiced, which would be viewed abhorrently in the present day and age. The author’s narrative is stated to be identifiable to a specific group of people in a specific region. The plea of novelized history is alleged to have not been established through any material which is contextual, and the novel intrinsically is alleged to be obscene. The reference to the place of the occurrence and the dates are aspects which are treated as critical, though the progeny to be conceived would be called the Child of God. There is no doubt that the language used in the novel, especially the Tamil version, can be said to be rustic and a little crass. Is that by itself fatal? To our mind, the answer to this would be in the negative. There has to be something more to classify the novel as obscene per se or for requirement to delete certain parts of the novel.

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150. The test of obscenity as it evolves has also been discussed. We observed that reading of the novel does not create an appeal to the prurient interests or can be said to be lascivious or tending to deprave or corrupt. The necessary test of the various provisions of the Indian Penal Code, including Section 292, can hardly be said to have satisfied the prerequisite before one proceeds to prosecute the author/publisher. Mere recitation of the sections or the phraseology of some judgments as part of the complaint cannot suffice to create such prosecutions. 151. If the contemporary community standards test or the community tolerance test as enunciated in *Aveek Sarkar's case (supra)* and subsequently discussed in *M.F. Hussain's case (supra)* is applied, it can hardly be said that this novel is so offensive even by the current mores. It is not to be judged by the eyes of the insensitive which sees only obscenity in everything. The judge has to place himself in the position of the author in order to appreciate what the author really wishes to convey and thereafter, placing himself in the position of the reader in every age group in whose hand the book is likely to fall, arrive at a dispassionate conclusion. This is what we have endeavored to do [a principle reiterated in *M.F. Hussain's case (supra)* by reference to *Samresh Bose's case (supra)*]

152. It is from the standard of a reasonable, strong and firm minded person that we have to test the book and not that of a person who in every contra point of view smells a danger. It is this view which has found favour in *Tasleema Nasreen's case (supra)* by reference to the earlier judicial pronouncements.

169. The novel must be understood in its true perspective and storyline and the mere use of a more crass or earthy language to convey the dialogues cannot be the basis to take on the author and make it into a larger social issue only because a particular temple or site has been referred to in the novel, which also stands subsequently withdrawn by the author in the sequels to the novel. 170. A larger cause has emerged on account of the role played by the State in matters such as these. The State by itself did not find anything offensive in the novel. It got published and remained in the market to be read for more than four years. What seems to have triggered for a State action was a perceived threat to the peace in the town, resulting in interventions by the officials. We can thus perceive it only as an endeavour of peace initiative rather than there being any offence being committed.

Thus, whenever free speech and expression is sought to be given wings and let loose against the backdrop of one's creativity, it must carry on its flight within the domain of constitutional morals, forever remembering that while individual opinions and forms of expression are critical to advancement and multifaceted national development, equally important is the safeguarding of the dignity and respectability of another and his cherished beliefs, for the latter must never be compromised on account of the freedom guaranteed under 19(1)(a), as the victim in such circumstances will be no less than the constitutional heartbeat of fraternity – The national brotherhood.

186. A book cannot be dismissed merely as sensational, reactionary or mean-spirited. A publisher evaluates the work of an author on the quality of its sourcing and writing. 187. In

“Madhorubagan”, the author Dr. Perumal Murugan did not set out to explode any myths, but conducted research about what he believed to be ‘revealed truths’ that are far more complex in nature. He decided to “follow the facts where they led”, without regard to any consequences. For that, he has been vilified. In truth, not a single fact stated in the novel had been seriously challenged ever since its publication in Tamil. It is only after the publication of the novel’s English version, understandings that otherwise would have remained in darkness came to light. Can a blanket banning of the novel mean that the true perspective and storyline of this novel will not get addressed in our society

191. We are thus of the view that W.P. No.1215 of 2015 be allowed and the prayer sought therein granted to the extent that there is no binding force or obligation arising from the so called Settlement arrived at with the intervention of the State Authorities on 12.1.2015 and a quietus be given to that issue. 192. There is no necessity warranting action against any publication of the Tamil novel “Madhorubagan” or its English translation by name “One Part Woman”, as sought for by the opponents of the novel and therefore, W.P. No.20372 of 2015 stands dismissed. 193. There can also be no possible direction for any police action against the author and/or the publisher, or for any case to be registered or proceeded further, in view of what we have discussed and therefore, Crl. O.P. Nos.7086 and 7153 of 2015 also stand dismissed.