

ITEM NO.11

COURT NO.5

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s) (Criminal) No(s). 184/2014

SUBRAMANIAN SWAMY

Petitioner(s)

VERSUS

UNION OF INDIA, MIN. OF LAW& ORS.

Respondent(s)

(with appln. (s) for permission to appear and argue in person and stay and office report)

WITH

W.P.(Crl.) No. 8/2015

(With appln.(s) for stay and Office Report)

W.P.(Crl.) No. 19/2015

(With appln.(s) for vacating stay and appln.(s) for stay and Office Report)

T.P.(Crl.) No. 102-105/2015

(With appln.(s) for stay and Office Report)

T.P.(Crl.) No. 94-101/2015

(With appln.(s) for stay and Office Report)

Date : 07/04/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

Mr. T.R. Andharujina, Amicus Curiae

Mr. K. Parasaran, Amicus Curiae

For Petitioner(s) Petitioner-in-person.

Mr. G.S. Mani, Sr. Adv.

Mr. A. Lakshminarayanan, Adv.

Mr. M. M. Kashyap, Adv.

Mr. Sushil Kumar Jain, Sr. Adv.

Mr. Puneet Jain, Adv.

Mr. Pradeep Agarwal, Adv.

Ms. Chhaya Kirti Advocate. Adv.

Mr. Manu Maheshwari, Adv.

Ms. Pratibha Jain, Adv.

For Respondent(s) Mr. Gaurav Agrawal, Adv.

Mr. Rakesh Dwivedi, Sr. Adv.
 Mr. Subramonium Prasad, AAG
 Mr. M. Yogesh Kanna, AOR
 Ms. J. Janani, Adv.

Mr. P.S. Narasimha, ASG
 Mr. C. Paramasivam, Adv.
 Mr. M.P. Parthiban, Adv.
 Mr. Rakesh K. Sharma, AOR

Mr. V. Shekhar, Sr. Adv.
 Mr. Tarun Gupta, Adv.

Mr. V. Giri, Sr. Adv.

UPON hearing the counsel the Court made the following
 O R D E R

Mr. Narsimha, learned Additional Solicitor General, Mr. Rakesh Dwivedi, learned senior counsel appearing for the State of Tamil Nadu, Mr. V. Giri, learned senior counsel and Mr. Shekhar, learned senior counsel appearing for some of the complainants, while making a prayer for grant of four weeks time to file the counter affidavit, submitted that the points that have been urged by the petitioner and which have been enumerated by this Court vide order dated 30.10.2014 are not acceptable in the constitutional canvass. They have basically referred to two contentions raised by Mr. Subramanian Swamy, the petitioner, who had appeared in person. The said contentions read as follows :

"(a) The provisions contained in Sections 499 and 500 IPC, travel beyond the restriction clause enshrined under Article 19(2) of the Constitution of India, for that really constricts the freedom of speech beyond reasonable limit.

(b) The very purpose of Article 19(2), as would be evident from the debate in the provisional Parliament, was not meant to put such restrictions and, therefore, such an enormous restriction cannot be thought of under Article 19(2) to support the constitutionality of the said provisions and further it will violate the concept of rule of law."

It is submitted by them that Article 19(2) of the Constitution itself imposes the restriction and, therefore, the

submissions put forth by Mr. Subramanian Swamy that the provisions contained in Sections 499 and 500 of the Indian Penal Code travel beyond the restrictions as enshrined under Article 19(2) of the Constitution of India and reference to the debate in the provisional Parliament are unsustainable.

At this juncture, we have thought it apt to have the assistance of Mr. K. Parasaran, learned senior counsel and Mr. T.R. Andhyarujina, learned senior counsel to assist the Court. Apart from the contentions which were raised by Mr. Subramanian Swamy, which were recorded in our previous order, today, as we are obliged, we must record the submissions of the learned counsel appearing for the respondents, as has been stated hereinbefore, the emphasis is on the constitutional restriction, as incorporated under Article 19(2). The said Article 19(2) reads as follows :

"(2) 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."

Mr. Dwivedi, Mr. Narsimha, Mr. Giri and Mr. Shekhar, learned senior counsel, would give immense emphasis on the phrase "defamation or incitement to an offence". To buttress the stand that the word 'defamation' being there in the Article itself and that being there in Section 499 of the Indian Penal Code which defines 'defamation' and also provides enormous safeguards by way of number of exceptions, there can be violation of Article 19(2) of the Constitution.

Mr. Andhyarujina, learned senior counsel submitted that there has to be a debate with regard to the conceptual meaning of the term 'defamation' used in Article 19(2) of the Constitution and the definition of 'defamation' in Section 499 of the Indian Penal Code. It is also his submission, *prima facie*, that regard being had to the accent given under Article 19(1)(a) to freedom of speech and expressions and regard being had to the development of free speech and expression in last few decades, the debates in the provisional Parliament may be of some help. Learned senior counsel would contend that the terms 'defamation' or 'incitement' has to be read disjunctively. According to him, "incitement to an offence" would stand on a different compartment altogether and the 'defamation' has to be construed in a different compartment and, therefore, 'incitement to an offence' would have criminal

capability whereas 'defamation' as per Article 19(2), when properly understood and appreciated, would give rise to civil liability. We repeat at the cost of repetition, there are, *prima facie*, views of Mr. Andhyarujina, as learned senior counsel himself submitted with all the humility at his command, that the case requires detailed argument and he will be assisting the court from all perspectives.

Mr. K. Parasaran, learned senior counsel, who has been requested to assist the Court, appearing at a later stage, submitted that the first part of Article 19(2) i.e. "nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law" would stand disjunctively from the rest of the Article and Sections 499 and 500 of the Indian Penal Code being the existing law, are saved under the Constitution. It is his submission that the freedom of speech and expression possibly has to be controlled one not to include the concept of defamation as defined under Section 499 IPC. Learned senior counsel has urged that "reputation", that is, "kirti", is the greatest treasure of the man of this side of the grave and, therefore, no citizen has a right to defame another. It is canvassed by him that as the existing law is protected, it is to be seen whether apart from freedom of speech and expression, other Articles in Part III of the Constitution are violated.

It is his further submission that if everyone would use the language, which is defamatory in nature, it would become collective irresponsibility which the law does not countenance.

Mr. Sushil Kumar Jain, learned senior counsel appearing for one of the petitioners, would submit that though the existing laws are saved and may be segregable from the other part, yet they have to pass the test of "such law", which impose reasonable restrictions on the exercise of the right pertain to 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. Mr. Jain would further submit that these conditions precedent are bound to have inescapable association with the existing law and the existing law can only withstand the constitutional scrutiny, if they meet the parameters provided/stipulated therein.

Ms. Chaya Kirti, learned counsel, assisting Mr. Sushil Kumar Jain, learned senior counsel, has undertaken to supply a copy of the brief to Ms. Prabha Swamy, learned counsel, who is requested to assist Mr. K. Parasaran, learned senior counsel.

Mr. T.R. Andhyarujina, learned senior counsel shall be assisted by Ms. Jesal Wahi, learned counsel.

Let the counter affidavits be filed within four weeks by all the respondents. Rejoinder affidavit, if any, be filed within four weeks therefrom

List the matter on 08.07.2015.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master