

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.07.2017

DELIVERED ON : 20.10.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA  
AND

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.17615 of 2013 and 31237 of 2016  
and MP.No.2 of 2013, WMP.Nos.27107 and 27108 of 2016

K.Senthil Mallar .. Petitioner in  
both WPs

-vs-

1.The Government of Tamil Nadu,  
rep. by its Principal Secretary to Government  
Public Department (SC)  
Fort St. George, Chennai -9.

2.Tamil Sanga Palagai  
rep. by its Founder  
M.C.Tamilpithan  
(2nd Respondent impleaded as per the order  
of this Court dated 21.09.2016 in MP.No.3/2013 in  
WP.No.17615 of 2013) .. Respondents  
in WP.No.17615/2013

The Government of Tamil Nadu,  
rep. by its Principal Secretary to Government  
Home Department (Courts VIA)  
Fort St. George, Chennai -9. .. Respondent  
in WP.No.31237/2016

Writ petitions have been filed under Article 226 of the  
Constitution of India praying to issue a writ of Certiorari to  
call for the records from the respondent pertaining to the  
impugned notifications No.146 dated 30.05.2013 and No.182 dated  
19.08.2015 respectively published through Tamil Nadu77  
Government Gazette (Extraordinary) and quash the same.

WP.No.17615 of 2013:

For Petitioner: Mr.Lakshmi Narayanan for  
Mr.P.Vijendran

For R1 : Mr.R.Muthukumarasamy, AG  
assisted by Mr.R.Kumar, SGP

For R2 : Mr.R.Sreerangan

WP.No.31237 of 2016:

For Petitioner : Mr.Lakshmi Narayanan for  
Mr.P.Vijendran

For Respondent : Mr.R.Muthukumarasamy, AG  
assisted by Mr.R.Kumar, SGP

COMMON ORDER

R.MAHADEVAN, J.

The Writ Petition in W.P No.17615/2013 has been filed to quash the impugned notification No.146 dated 30.05.2013 published by the first respondent in Tamil Nadu Government Gazette Extraordinary, whereby the book "Meendezhum Pandiyar Varalaru" (kPz;blGk; ghz;oah; tuyhW) written by the petitioner, has been forfeited by invoking the powers under Section 95 Cr.P.C on the ground that the contents therein are abusive and in the nature of promoting enmity between different castes.

2.The Writ Petition in W.P.No.31237/2016 has been filed to quash the impugned notification No.182 dated 19.08.2015 published by the respondent Government in Tamil Nadu Government Gazette Extraordinary, whereby the book "Venthar Kulathin Iruppidam Ethu?" (வேந்தர் குலத்தின் இருப்பிடம் எது?) written by the petitioner, which is a continuation of the earlier book, the subject matter of W.P.No.17615/2013, was ordered to be forfeited by invoking the powers under Section 95 Cr.P.C.

3.Since the petitioner has authored both the books, both the writ petitions were clubbed and heard together, by consent of both the parties.

4.The brief facts of the cases, are as follows:

The petitioner, claiming to be hailing from Mallar Community, has penned both the books. The first book "Meendezhum Pandiyar Varalaru" was penned by him, claiming that Mallars also

known as 'pallars' are the descendants of the ancient Pandya kings and that, they are wrongly arrayed as "Dalits", though history would reveal that they belonged to the agricultural and ruling class, superior to other communities classified under the Schedule. Pitching for reclassification, the petitioner has in the process of tracing the identity of mallars with Pandyas, based on quotes in various books, also penned the fall of Pandya dynasty and the rise and domination of other communities in the societies.

5.The petitioner has also claimed that Kuravar, Idayar, Pallar, Fishermen, Maraver are the basic and original communities in Tamil Nadu and others now claiming to be the natives of this State, are aliens. When a permission was sought for release of the book, which is the subject matter of WP.No.17615 of 2013, the first respondent issued the impugned notification No.146 dated 30.05.2013 forfeiting the same, under Section 95 Cr.P.C on the ground that the contents are abusive and demeaning to other communities and therefore, would create a law and order problem. Aggrieved over the same, the petitioner has filed W.P.No 17615 of 2013 pitching for his fundamental right of freedom of speech and expression under Article 19 (1) (a) of the Constitution of India.

6.During the pendency of the first writ petition, another book, titled as "Venther Kulathin Iruppidam Ethu?" penned by the petitioner in continuation with his earlier book and in the same lines tracing the identity of "Venthers" with mallars, was forfeited by the Government vide the impugned notification No.182 dated 19.08.2015 for similar reasons. Challenging the same and claiming that his work is purely sociological and determined to remove the stigma on the caste by declassifying the pallar community from being categorised as 'Adi-dravidars' and 'Dalits', the petitioner has filed W.P.No.31237 of 2016 alleging that the impugned notifications are in violation of Articles 14, 19(1)(a) and 21 of the Constitution of India.

7.The State, on the other hand, in the counter affidavit, has justified the forfeiture of both the books. The Government order itself contains the extracts which strikingly are provocative and entice violence disrupting the public harmony and peace in the state with various castes and sub-castes.

8.Mr.V.Lakshmi Narayanan, learned counsel appearing for Mr.P.Vijendiran, learned counsel on record for the petitioner, taking us through the law on the subject by the Hon'ble Supreme

Court and this Court as well as other High Courts in the following decisions reported in (i)CDJ 1961 SC 336 (Harnam Das v. State of Uttar Pradesh),

(ii)(1976) 4 SCC 213 (State of Uttar Pradesh v. Lalai Singh Yadav),

(iii)(1988) 1 SCC 668 (Ramesh v. Union of India and others),

(iv)(1989) 2 SCC 574 (S.Rangarajan v. P.Jagjivan Ram and others),

(v)(1994) 6 SCC 632 (R.Rajagopal @ R.R.Gopal and another v. State of T.N. and others),

(vi)(2010) 7 SCC 398 (State of Maharashtra v. Sangharaj Damodar Rupawate),

(vii)2010 1 SCC 689 (Kashi Math Samsthan and another v. Srimad Sudhindra Thirtha Swamy and another),

(viii)CDJ 1970 MPHC 095 (Ramlal Puri v. State of M.P),

(ix)1883 CRL.LJ 1446 (Varsha Publications Pvt.Ltd v. State of Maharashtra and others),

(x)CDJ 2002 BHC 1461 (Anand Chintamani Dighe and another v. State of Maharashtra and others),

(xi)(2006) 3 MLJ 289 (Sony Pictures Releasing of India Ltd v. State of Tamil Nadu),

(xii)CDJ 2007 BHC 507 (Sangharaj Damodar Rupawate and others v. Nitin Gadre, Joint Secretary to the Government of Maharashtra and others),

(xiii)(2010) 8 MLJ 877 : (2010) 5 CTC 134 (C.Sakthivel v. Commissioner of Police),

(xiv)CDJ 2015 BHC 1639 (Sanskar Marathe v. State of Maharashtra and others) and

(xv)2016 (4) CTC 561 (S.Tamilselvan and another v. Government of Tamil nadu and others),

would contend that the impugned orders are abridging the fundamental rights guaranteed under Articles 14, 19(1)(a) and 21 of the Constitution of India. The learned counsel painstakingly contended that when the right to freedom of speech and expression is constitutionally protected, the contents of the books unless hit by Article 19(2), cannot be banned and in the present case, it cannot be said so. The learned counsel also contended that the object of the books was to resurrect the community of the petitioner, tracing their origin as the erstwhile ruler of this land.

9.The learned counsel for the petitioner further contended that the petitioner has a Master's degree in History and the books were penned after exhaustive research and the contents are

not merely the author's comments but also extracts from the books of various authors, the details of which are available in the foot notes. In the said process, the petitioner had traced the roots of his "Mallar" community to the "Pandiya", who ruled this land earlier. Therefore, the statements even if on the face of the books, look to be offensive, cannot be banned as the earlier works were not banned and if the books are read as a whole, the object of the same and the subjective findings would be found relevant. The learned counsel also contended that the impugned orders came to be passed without affording any opportunity to the petitioner.

10. The learned counsel also contended that after the sale of over 1000 prints of the book and when there have not been even a single incident of violence or agitation from any of the aggrieved communities, banning the first book is arbitrary and unwarranted. The counsel also contended that if the findings based on research, even if found to be hurting or abusive, cannot be banned, if they are nothing but expression of "truth".

11. The learned counsel for the petitioner further contended that the object of the book was to point out to the community people that they were once the agriculturists and rulers of this land and that being above many other communities in social and economical strata, they have been classified on par with others as "Dalits" and "Adi-dravidas" despite earlier being "Venthar" or the king. The learned counsel pointed out that necessity for the book arose as the Government had classified them suppressing the history and erroneously under the Schedule without taking the history into consideration. Also, considering the interests of other communities and to avoid any conflict, the petitioner has already filed a memorandum for each book, expressing his willingness to alter the contents of the books with the alterations and deletions. It was also pointed out by the learned counsel that the references sought by the State were also furnished in the additional typed set. Under such circumstances, contending that the banning of both the books by invoking Section 95 (1) (a) of Cr.P.C as arbitrary and violating the freedom of speech, expression and personal liberty, the learned counsel sought to quash the impugned orders in both the writ petitions and allow the books to be released.

12. Per contra, Mr. R. Muthukumaraswamy, learned Advocate General assisted by Mr. R. Kumar, Special Government Pleader, pointing out the various paragraphs in both the books, referred in the impugned orders, contended that the contents of the books are abusive, indecent and derogatory to other communities and leaders such as, Tvl. Pasumpon Muthuramalinga Thevar, Tvl.

Kamarajar, Tvl. Azhagumuthu Kone, Tvl.Veerapandiya Kattabomman, Tvl.Annadurai, Tvl. Ramasamy Padaiachi, Tvl. Karunanithi and the same would certainly entice hatred and disharmony between various communities and affect the public tranquillity.

13.The Learned Advocate General also justifying the impugned orders, contended that the right guaranteed under Article 19 (1) (a) is not absolute and would be subject to restrictions under Article 19 (2) and therefore, the state was very much well within its right to pass the impugned orders forfeiting the books. Further, as per Section 95 Cr.P.C, a book can be forfeited, if the publication and circulation of the same would lead to commission of offences punishable under Sections 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860 ).

14.The Learned Advocate General refuting the contention that after sales of over 1000 copies, the book cannot be banned, relying upon the earlier orders of this Court in W.P.No.6462/2013, contended that the said contention is false as the permission was sought to release the book on 12/05/2013. The Learned Advocate General also contended that the objection to the book was already received by that time and the copy of the first book was received by the Government on 18/05/2013 and thereafter, by studying the entire book, the impugned order came to be passed. It is only when the book was circulated after the ban, the FIR was registered and the copies of the book were seized.

15.The Learned Advocate General further contended that it is not necessary to give any opportunity when an official Gazette publication is effected invoking the powers under Section 95 of Cr.P.C and hence there is no abridgment of the fundamental rights. The Learned Advocate General also contended that the contents of the book are only the matter and the object of the same does not matter. The language and contents reveal that the intention of the author is to spread hatred and disharmony under the guise of research and therefore, the impugned orders which were passed after getting the intelligence report, are well within the authority of the respondent. In support of his contentions, the Learned Advocate General relied upon the following judgments reported in

(i)AIR 1971 MP 152 (Full Bench) (Ramlal Puri v. State of Madhya Pradesh),

(ii)AIR 1951 Raj 113 (Premi Khem Raj Sharma v. Chief Secretary),

(iii)AIR 1971 Bom 56 (Gopal Vinayak Godse v. Union of India and others),

(iv) 1985 CRL.LJ 797(Pat) (Nand Kishore Singh and others v. State of Bihar and another) and

(v)1993 CRL.LJ 2040 (P& H) (Barjinder Singh v. State of Punjab and others).

After due consideration of all the materials, the impugned order came to be passed by the Principal Secretary, who has passed the language test prescribed by the Public Service Commission. Insofar as the memorandum is concerned, the Learned Advocate General has submitted that the Government has decided to accept all the alterations and deletions as such except the alternative portion in pages 91 and 205 of the book "Meendezhum Pandiyar Varalaru", which will be accepted only if the petitioner submits relevant literatures before this Court and cites the same in the respective pages and in the bibliography.

16.In so far as the second book is concerned, it was submitted by the Learned Advocate General that the alterations and deletions except in pages 18, 53 (ii), 85-86, 120, 122 and 123 and page 58 will be accepted. Insofar as the alternatives submitted for pages 18, 53(ii), 85-86, 120, 122 and 123 are concerned, the same will be accepted if the references are placed before this Court and mentioned in the book at respective pages and in the bibliography. Regarding the alternative portion in page 58, the Learned Advocate General submitted that since many citizens falling under Scheduled Caste category are enjoying the benefit, it will create a flutter in the society and would not be in the best interest of the people falling under the schedule. Hence, he emphasized the need for deletion of the portion. The Learned Advocate General also relied upon the status report filed on 21.07.2017 to contend that though the extracts from the books have been furnished, the relevant substituted portions have not been specifically pointed out. Unless, the petitioner satisfies the first respondent, the ban cannot be lifted and therefore, prayed that appropriate orders may be passed in this regard.

17.Mr.R.Sreerangan, learned counsel appearing for the impleaded 2<sup>nd</sup> respondent, namely Tamil Sanga Palagai, highlighting the extracts from the banned book, pointed out the statement against various communities and the manner in which the language used in many places. The learned counsel supported the stand of the Government that in the best interest of the society, the books have been rightly banned. Thus, the learned counsel sought for the dismissal of the writ petitions.

18.We have heard all the parties and perused all the

materials on record.

19. The era of kings are long gone. Our country is the largest democracy in the world. The words of Mahakavi Subramaniya Bharathi that "Every citizen is a king", became true, when democracy was made as one of the basic features of our constitution. It implies that the fate of the country is determined by each and every citizen, exercising their voting power. The transition or retention of power is determined by the success in elections won in political battles, unlike before the colonial era, when the ruler was determined by success in war.

20. This land of Tamil Nadu was predominantly ruled by chera, chola and pandiya kings. The other rulers included the pallava, the vijayanagara and nayakar dynasty. Thereafter, the Mughals and the Europeans came. Chera kings reigned the western part of the present Tamil Nadu including Kerala, while the Chola dynasty spread over the central and northern part and the pandiyas ruled the southern part. It could be arguably said that the chola dynasty at its peak extended their dominance to other parts of the state also defeating the Pandiya kings and extending their rule even beyond the present day India. History would reveal that the Pandiya reign goes back to Before Common Era and that they lost control over most part of present day Tamil Nadu mainly to the chola dynasty for considerable period and could come back to power only during the 13<sup>th</sup> Century. Thereafter, the rise of the Nayakars, Vijayanagara Empire and the domination of the Mughals, diminished any or negligible chances of revival. Then, after the British rule, the present day States were formed.

21. This land is the home to the oldest language, culture and civilization. From the time immemorial, this land has had the culture of describing a person, based on his occupation and place of residence. Thus, they formed a community which slowly evolved into a caste. However, the necessities of life forced people to venture into new areas of work, whereby one's identity based on work, could not be fixed and turned out to be evolving or in other words, people whose caste was once determined, based on a particular job, sprouted a new caste based on their new area of employment. The caste and sub-caste systems were increased tremendously and as on date, it exceeds 362 excluding the general/forward category.

22. Few communities became richer and started their dominance over the poorer. At the dawn of Independence from the suppressive and divisive colonial rule, the framers of the Constitution were conscious to protect the interest of diverse



communities in the country and thereby not only secured that all should be treated equally by guaranteeing such treatment and protection under Articles 14 to 18 of the Constitution of India. The policy of reservation in the fields of education and public employment, was introduced to uplift the economically weaker people, which in a way had lost its original purpose and become a tool of political demand and vote bank politics. Offenses inciting communal hatred and disharmony and peace were also made punishable under the Indian Penal Code. A Special Act was also enacted to curb the atrocities against the Scheduled Caste and Scheduled Tribes, but similar protection has not been extended to people of other communities and religions. The citizens coming under the reserved categories, enjoy special benefits and concessions in various forms and at various levels. The community of Mallar, identified with contemporary 'Pallar' falls under the Scheduled caste and they have been the recipients of various benefits.

23. The petitioner, in his both the books, has claimed to trace his community "Mallar" to that of the agricultural and ruling class of "Pandiyas" vis-a-vis "Venthars". The said community in the later and present days, is identified with 'pallar', denoting people who lived in low areas. We have perused the objectionable contents in the books and the impugned orders. It is the case of the petitioner that the object of the books is to establish their identity with Pandiyas and Venthar and to pitch for the removal of their classification from the scheduled caste as they cannot be treated on par with other communities in the schedule, which are much lower to his community both socially and economically.

24. It was agitated before us that the petitioner has given historical references to the claim in the books, which even if it seems to be against certain communities, are necessary in the context and would not negate the presumption guaranteed in favour of the free speech and expression under Article 19(1)(a) of the Constitution. The learned counsel for the petitioner has relied upon various judgments including the decision of the Division Bench of this Court reported in 2016 (4) CTC 561 (citd supra) in the Perumal Murugan's case, wherein all other cases on the subject were referred to. Therefore, this Court feels that it is suffice to refer to the said decision alone, wherein it has been held as under:

"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 States 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 OruGramathile, 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) Prakash Jha Productions vs. Union 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) Srishti School of Art, Design & Technology vs. Chairperson, Central Board of Film Certification, 2011 (123) D.R.J.

In this case, the makers of the documentary called Had Anhadwere asked to carry out cuts, which the petitioner protested against.

It was held that the cuts proposed were violative of the petitioners 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) LYCA Productions Pvt Ltd vs. Government of Tamil Nadu, 2014 S.C.C. Online Mad. 1448 In this case, the producers of the popular Tamil commercial feature film Kathiwere 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 non-dogmatic 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 UCertificate, 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) MaqboolFida 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 Samaresh 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)...

(D) KATTA PANCHAYATS

.....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.

.....

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?

135. No freedom is absolute and thus, even the right of freedom and expression is circumscribed by Article 19(2) of the Constitution of India. The writings emanate from ancient times and what was not expected earlier became acceptable later on...

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 authors 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.

151. ....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. Hussains case (supra) by reference to Samaresh 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.

159. In the aforesaid context, the plea of the learned counsel for the publisher becomes significant, that it was not the claim of the author that he had referred to any written text so as to come to a particular conclusion. In fact, the practices prevalent are also claimed to be based more on folklore, which certainly is not documented history, as enunciated by us hereinbefore. It is carried by word of mouth. It relates to a much earlier period. We cannot really in substance say that the arguments advanced on behalf of the author and the publisher are contradictory as sought to be canvassed by the persons opposed to the novel on the ground that on the one hand the publisher was claiming the novel to be based on folklore, while on the other hand, the author was pleading that it was only a novel which was set to be located in a particular area, which often happens while writing books. It does not necessarily mean that if there is a reference to any geographical area qua a custom or a practice, that practice should be directly correlated to it. However, we must say that in the novel in question, there is a reference not only to the area, but also to the temple and the traditions of that place. The Authors Note at the end of the novel also refers to his search for historical information about the town. But, all this has to be read holistically as folklores of the area which have been referred to in the novel, which is primarily based on the turbulent circumstances a childless

couple goes through in a typical societal setup. At the cost of repetition, we seek to emphasize that the theme of the novel is the travails of this couple, and the reference to the so called practice is only a suggestion put forth to the protagonists by their own family members, as a means to attain parenthood.

161. If the novel was really that offensive, the State would have exercised its power under Sections 95 and 96 of the Code of Criminal Procedure. On the other hand, the novel has been receiving accolades from different literary forums which are associated with quality writings.

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.

171. There is a dual consideration which arises for consideration. The first is whether such a peace initiative in the given situation was misplaced and the second is whether in subjects of this nature dealing with art and culture, where there are different points of view, there should be State intervention and if so, to what extent?

172. We had noticed the fact at the inception that we were troubled by the State interventions in such subject matters are not simply matters of brokering peace. There are different and variant thought processes on social mores and while each may be entitled to his own view, it cannot be forced down the gullet of another. It is not unusual to see now a campaign against a book, a film, a painting, a sculpture and other forms of artistic representations. Art is often provocative and is meant not for everyone, nor does it compel the whole society to see it. The choice is left with the viewer. Merely because a group of people feel agitated about it cannot give them a license to vent their views in a hostile manner, and the State cannot plead its inability to handle the problem of a

hostile audience (S.Rangarajan's case supra). A vague construction therefore, of a possible deplorable impact on a certain section is not reason enough to deprive an artist of his expression. Even more so in a democratic country like ours. This aspect has been emphasized while dealing even the film Aarakshan, the release of which was suspended by the State even after the Censor Board Certificate was issued, on the ground of possibility of a law and order problem arising. In Prakash Jha Productions case (supra), it was held that it was the duty of the State to maintain law and order. The Constitution of India itself provides a democratic space to voice one's views unacceptable to the others, but because it is unacceptable cannot be reason for itself to prevent it from being so expressed.

175. In M.F. Hussain's case (supra), the Court had expressed the importance of freedom of expression as an after speech as there can be no freedom of speech if there is no freedom after that, to survive with that view:-

"Democracy has wider moral implications than mere majoritarianism. A crude view of democracy gives a distorted picture. A real democracy is one in which the exercise of the power of the many is conditional on respect for the rights of the few. Pluralism is the soul of democracy. The right to dissent is the hallmark of a democracy. In real democracy the dissenter must feel at home and ought not to be nervously looking over his shoulder fearing captivity or bodily harm or economic and social sanctions for his unconventional or critical views. There should be freedom for the thought we hate. Freedom of speech has no meaning if there is no freedom after speech. The reality of democracy is to be measured by the extent of freedom and accommodation it extends."

Thus, it is not an issue where the State should refrain from interfering, but there is requirement of positive measures of protection to be taken against sufferance as a consequence of holding that view. The judgments referred to aforesaid include even international opinions in this field.

176. The fact that the State is duty bound to protect an individuals freedom of expression reflects even in international judgments on this aspect. Reference was made to Dink vs. Turkey, Case Nos.2668/07 6102/08, 30079/08, 7072/09 and 7124/09 decided on 14.9.2010, involving an Armenian journalist by name Dink Firhat in Turkey, who had written a series of articles analyzing the identity of Turkish citizens of Armenian origin. This resulted in him being charged with the offence of Denigrating Turkishness. During the course of his trial, Dink Firhat was assassinated by an ultra-nationalist organisation. A seven judge bench of the European Court of Human Rights unanimously held that Turkey was guilty of not protecting the individuals freedom of expression under Article 10 of the European Convention on Human Rights as they had a proactive obligation of protecting his right to express his opinions. The Court had the following observations to make (para 106, concurring opinions of Judge Sajó and Mrs. Sáska Tsotsoria) :-

".....the real and effective exercise of freedom of expression does not depend merely on the State's duty to refrain from interference, but may require positive measures of protection, even in relationships between individuals. Indeed, in some cases, the State has a positive obligation to protect the right to freedom of expression against damage even from private persons".

"There is a positive obligation of the State to the prevent censorship by such (mob) groups and a positive obligation on the State to protect the life and freedom of expression of the writer."

184. We, however, find some important aspects in the suggested guidelines, which we would like to put down as under:-

(i) There is bound to be a presumption in favour of free speech and expression as envisaged under Article 19(1)(a) of the Constitution of India unless a court of law finds it otherwise as falling within the domain of a reasonable restriction under Article 19(2) of the Constitution of India. This presumption must be kept in mind if there are complaints against

publications, art, drama, film, song, poem, cartoons or any other creative expressions.

(ii)The State's responsibility to maintain law and order would not permit any compulsion on the artistes concerned to withdraw from his/her stand and non-State players cannot be allowed to determine what is permissible and what is not.

(iii)It is high time the Government constitutes an expert body to deal with situations arising from such conflicts of views, such expert body to consist of qualified persons in the branch of creative literature and art so that an independent opinion is forthcoming, keeping in mind the law evolved by the judiciary. Such an expert body or panel of experts would obviate the kind of situations we have seen in the present case. In such matters of art and culture, the issue cannot be left to the police authorities or the local administration alone, especially when there is a spurt in such conflicts.

(iv)The State has to ensure proper police protection where such authors and artistes come under attack from a section of the society.

(v)Regular programmes need to be conducted for sensitizing officials over matters dealing with such conflicts of artistic and literary appreciation."

Ultimately, the ban sought by the petitioner on the novel therein was rejected. It is also pertinent to point out herein that the State had not exercised its powers under Sections 95 and 96 of Cr.P.C as it had in the present case and the case of the petitioner is that the contents are not fiction, but true accord of transformation of various communities. As observed by the Division Bench, stepping into the shoes of a reader of different age groups, the contents of the book, the language used therein against various communities including women, linguistic migrants and women folk of other state, keeping in mind the object of the author has to be analysed.

25.As rightly pointed out by the counsel for the petitioner, the presumption is always in favour of freedom of speech and expression as laid down by this Court in the Perumal Murugan's case (cited Supra). This Court had also recommended the Government to establish a committee to deal with such sensitive issues before any preventive action is initiated by them. It is also inarguably clear that the presumption under Article 19(1)

(a) is subject to restrictions imposed in Article 19 (2) of the Constitution.

26. It is settled law that the extent of State intervention in the matters of arts and culture is limited to circumstances enumerated under Article 19(2), which reads as under:

"Article 19 (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".

27. Once, it appears to the State that the circumstances as enumerated under Article 19(2) are attracted, it will exercise its powers under Section 95 of Cr.P.C, which reads as under:

95. Power to declare certain publications forfeited and to issue search warrants for the same. Where-

(a) any newspaper, or book, or  
(b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860 ), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub- inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in section 96,-

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867 );

(b) "document" includes any painting, drawing or

photograph, or other visible representation.

(3)No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96."

28.To arrive at a decision to forfeit or ban an artistic work in the form of book, it is duty of the State to evaluate the contents independently within the frame work of law de hors any objection raised by any aggrieved party. When it is claimed that the contents are anthology with the personal opinion of the author, it calls for great caution and prowess from the State, while exercising its authority under Section 95 of Cr.P.C and Article 19 (2) of the Constitution.

29.On the other hand, it has been agitated before us by the learned Advocate General that the contents and comments in the books against other communities and linguistic minorities are provocative, indecent, derogatory and would promote enmity between various communities. It was also pointed out that abusive language has been employed at many places against the leaders of various caste outfits, present and yester year leaders and women and therefore, following the procedure as contemplated under Section 95 of Cr.P.C, to prevent any toward incident, the impugned orders came to be passed.

30.At this juncture, it is relevant to extract the portion of the contents as quoted in both the impugned orders issued by the respondent Government vide publications, which read as follows:

Tamil Nadu Government Gazette No.146 dated 30.05.2013:

1. வேளாண்மை என்றால் என்னவென்று தெரியாத வேளாளர், வெள்ளாளர் என்று வேடம் பூண்டு வெற்று முலாம் பூசி ஒப்பனை செய்து கொள்கின்ற பிள்ளை சாதியினர் தமிழர் வீரர்களின் மூலக் குடியினர் அல்லர் என்றும் இருந்தாலும் அதிகாரத்தைப் பயன்படுத்தி சிலர் தங்களது பொட்டுக்கட்டி சாதியான சின்னமேளம் என்றும் தெலுங்குச் சாதியினை 'இசை வேளாளர்' என்றும் இட்டுக்கட்டி எழுதி மகிழ்கின்றனர் (பக்கம்-91)

2. வந்தேறி வடுக நாயக்கர்களுக்கு குற்றப்பரம்பரை மறவர்கள் மட்டுமின்றி பிள்ளைகள், சேவைக்காரர்கள், மணியக்காரர், சேதுராயர், தலைவனார், வன்னிய வலையர், செட்டிகள், முதலியார் முதலிய சாதியினர் காட்டிக் கொடுப்புகளைச் செய்து ஆங்கிலேயர்களுக்கு அடிபணிந்து பிழைப்ப நடத்தி வந்தனர் (பக்கம்-205).

3. மறவர்கள் மாடு திருடுவதில் கை தோர்ந்தவர்களாவர். மதுரைப் பகுதியில் மறவர்கள் மாடுகளைத் திருடுவதற்குத் தனி நுட்பத்தையே கையாண்டனர் (பக்கம்-217).

4. பிராமணர்கள் பாசாங்குக்காரர்கள், மறவர்கள் சட்ட திட்டங்களுக்குக் கட்டுப்படாதவர்கள், செட்டி ஈனக்குணம் உடையவர்கள், வெள்ளாளர் தன்னலக்காரர்கள், நாயக்கர் மந்தமானவர்கள், கள்ளர் மறைந்து ஒளிந்து பதுங்குகிறவர்கள். குறவர்கள் நிலையில்லாமல் அலைந்து திரிபவர்கள், பறையர் வரம்பு, மீறி பாலியல் தொழிலில் ஈடுபடுபவர்கள் (பக்கம்-219).

5. மறவர்கள், நாயக்கர், ரெட்டி, சக்கிலியர், முதலிய சாதியினருக்கும், கோயிலுக்கும் யாதொரு உறவோ தொடர்போ கிடையாது என்றும், கோவில் திருவிழாவின் போது விடலை எறியப்படும் விடலைத் தேங்காய்த் துண்டுகளைப் பொறுக்க வரும் மறவர்கள் பாண்டியனுக்குப் பலி கொடுத்த ஆட்டுக் கிடாய்களின் தலையைத் திருடிச் சென்றபோது பள்ளர்களால் அடித்து விரட்டப்பட்ட வீர வரலாறு (பக்கம்-479),

6. நாடார்களைத் துக்கிக் கொள்ளையிட்டு வந்த மறவர்களிடமிருந்து நாடார்களைப் பாதுகாக்க எண்ணி காமராசர், இம்மானுவேல் சேகரனைக் கையிலெடுத்துக் காங்கிரசுக் கட்சியில் இணைத்து பள்ளர்களைக் கொண்டு மறவர்களைத் தாக்கினார் (பக்கம்-115).

7. இம்மானுவேல் சேகரனின் சீரிய நேரிய பணிகளைக் கண்டு அஞ்சிய பசும்பொன் உ. முத்துராமலிங்கம் மறவர்களைக் கொண்டு பள்ளர்களுக்கு எதிராகக் கலவரம் செய்தார். அதன் விளைவாக 1957-ல் இம்மானுவேல் சேகரனுக்கும் முத்துராமலிங்கத்திற்கும் கருத்து மோதல் ஏற்பட்டது. இதனைப் பொறுத்துக் கொள்ள முடியாத முத்துராமலிங்கம் மறவர்களை துண்டிவிட்டு 11.09.1957-ல் பரமக்குடியில் வைத்து வெட்டிக் கொன்றார் (பக்கம்-115).

8. எட்டப்ப நாயக்கன் வெற்றிலை எச்சில் துப்பும்போது அதனை வெண்கலக் குவளையில் ஏந்திப் பிடிக்கும் சேவைத்தொண்டு செய்து வந்தவனே அழகுமுத்து சேர்வை (பக்கம்-166).

9. கட்ட பொம்மு நாயக்கனை விடுதலைப் போராட்ட வீரராகக் காட்டுகின்றவர்கள், கட்டபொம்மு நாயக்கனை ஆங்கிலேயர்களுக்குக் காட்டிக் கொடுத்த எட்டப்ப நாயக்கனுக்கு சேர்வைக்காரனாகத் தொண்டிழியம் செய்து வந்த அழகுமுத்துச் சேர்வையை அழகுமுத்துக் கோனாக்கி, விடுதலைப் போராட்ட வீரனாக்கி, உண்மை வரலாறு என்னவென்றே விளங்காதவாறு மக்களைக் குழப்பியுள்ளனர் (பக்கம்-166).

Tamil Nadu Government Gazette No.182 dated 19.08.2015:

1. தமிழர்களில் உழைக்க மறுத்த கூட்டம் பாலை நிலத்தில் வாழ்ந்து கொண்டு வழிப்பறி, திருட்டு ஆகிய 'ஆறலைத்தல்' தொழிலில் ஈடுபட்டு வந்ததால் அவர்கள் எயினர் என்றும் கள்ளர், மறவர் என்றும் அழைக்கப் பெற்றனர் (பக்கம்-18).

2. பட்டியலில் உள்ள சாதிகளில் வன்னியர்களையும் சேர்க்க முயன்றபோது இராமசாமி படையாச்சி அதனைத் தடுத்து விட்டார். நாடார்களாகிய சாணார்களை பட்டியல் சாதிகளில் (ளுஊ) இடம் பெறவிடாமல் நாடார் சமூகத்தினர் பார்த்துக் கொண்டனர் (பக்கம்-41).

3. அண்ணாதுரையின் தவறான மொழி பெயர்ப்பை ஏற்றுக் கொண்டு 'ஆதி திராவிடன்' என்ற சொல்லைப் பயன்படுத்த 1980-ல் ஆணை பிறப்பித்தது (பக்கம்-47).

4. மள்ளர்கள் தாழ்த்தப்பட்டவர்கள் என்றால் கள்ளர், மறவர்களைவிட எப்படித் தாழ்த்தப்பட்டார்கள்? கோனார், சாணாரைவிட எப்படித் தாழ்த்தப்பட்டார்கள்? வண்ணார், அம்பட்டையரைவிட எப்படித் தாழ்த்தப்பட்டார்கள்? (பக்கம்-52).

5. அளவந்தார் கூட்டம் தற்போது தலித் என்றும் இம்மக்களை இழிவுபடுத்தத் துணிந்துள்ளது. 'தலித்' என்பதற்கு நொறுங்குண்டவன், நகங்குண்டவன், ஒடுக்குண்டவன், குழியில் விழுந்தவன், கீழானவன், அழுக்கானவன், செத்தமாடு தின்பவன், செத்த வீட்டில் பறை அடிப்பவன், சாக்கடை அள்ளுபவன், மலம் அள்ளுபவன் என்றெல்லாம் பொருள் சொல்லப்படுகிறது. இந்தப் பொருளடக்கத்தில் சங்க காலம் முதல் சமகாலம் வரை ஏர்த் தொழிலையும், போர்த் தொழிலையும் குலத் தொழிலாகக் கொண்ட மள்ளர்கள் இல்லை என்பது யாவரும் அறிந்த ஒன்றே (பக்கம்-53).

6. இந்த 'தலித்' வியாபாரிகள் வாழ்நிலையில் பின்தங்கிய வண்ணார்களையும், அம்பட்டையர்களையும் 'தலித்' என்று சொல்வதில்லை (பக்கம்-58).

7. மள்ளர்களின் கல்வி அளவைவிட கள்ளர்களின் கல்வியறிவு, சுமார் 15 விழுக்காடு குறைவாக உள்ளது என்று கள்ளர் சமூகத் தலைவர்களே கூறுகிறார்கள். பட்டியல் சாதிகளில் இல்லாத இந்து நாடார், கள்ளர், மறவர், வன்னியர், இசுலாமியர், மீனவர், முத்தரையர், கைவினைஞர்கள் (விசுவகர்மா), வண்ணார், அம்பட்டர் ஆகியோர் பழங்காலத்திலும் சரி, இப்பொழுதும் சரி கல்வி மற்றும் அரசு வேலை வாய்ப்பில் மள்ளர்களின்



அளவிலிருந்து குறைவாகவே உள்ளார்கள் (பக்கம் 64-65).

8. நாட்டில் பல முக்கியச் சாதிகள் குறிப்பாக நாடார், சாமார் சாதவ், மாலா, மாதிகா, மள்ளர், பறையர், பலயர், ஈழவர் ஆகியோர் இந்திய விடுதலைப் போராட்டம் பற்றிக் கவலைப்படவில்லை. மாறாக விடுதலை கிடைத்தால், வெள்ளைக்காரர்கள் இருக்கும் இடத்தில் பிராமணரும், அதற்கு அடுத்த நிலையிலுள்ள சில சாதிகளும் தான் அதிகாரத்தைப் பெறுவார்கள். அதனால் சாதிக் கொடுமைகள் தான் அதிகமாகும் எனக் கருதினார்கள். இதே காரணத்தைக் கூறியதற்காக நீதிக் கட்சிக்காரர்களையே 'தேசத் துரோகிகள்' என்று கூறினார்கள் (பக்கம் -76).

9. வரலாறு இல்லாதவர்கள் வரலாறு தொரியாதவர்களைக் கொண்டு, அரசு அதிகாரத்தை தவறாகப் பயன்படுத்தி (மீண்டெழும் பாண்டியர் வரலாறு) புத்தகத்தை தடை செய்துள்ளது (பக்கம் -82).

10. தெலுங்கு நாயக்கர் ஆட்சியின் 210 ஆண்டு கால ஆட்சியே மள்ளர் குலத்தாரின் வீழ்ச்சிக்கு காரணமாகும் (பக்கம் 85-86).

11. ஏன் கேவலம் திருடுகிற சாதியைச் சேர்ந்தவர்கள் கூட தங்களின் சாதியை மீசையை முறுக்கிக்கொண்டு வெளியில் சொல்லிக் கொள்ள முடிகிறது (பக்கம்-87).

12. (ஸை)இராசபாளையத்தில் உள்ள அரசுப் பள்ளியும், அரசு அலுவலகங்களும் உள்ள இடங்கள் மள்ளர்களுக்குச் சொந்தமானது.

(ஸை)மேலநீலிநல்லூர் பசும்பொன் முதலாமலிங்கத் தேவர் கல்லூரி அமைந்துள்ள இடம் மள்ளர்களுக்குச் சொந்தமானது.

(ஸை)மதுரை விமான நிலையம் அமைந்துள்ள இடம் சின்ன உடைப்பு, ஊரினைச் சேர்ந்த மள்ளர்களுக்குச் சொந்தமானது (பக்கம் -91).

13. 10 ஆண்டுகள் மள்ளர்களுக்கான உரிமை தென்காசித் தொகுதியில் பறிக்கப்பட்டது. இந்தியக் கம்யூனிசக் கட்சி (சிபிஐ) கடந்த முறை அப்பாத்துரை என்ற பறையரையும், இந்தமுறை லிங்கம் என்ற பறையரையும் நிறுத்தி வெற்றி பெறச் செய்தது. கம்யூனிசக் கட்சியில் உள்ள மள்ளர்கள் தென்காசித் தொகுதியில் போட்டியிட வாய்ப்பு, கேட்டபோதும் அந்தக் கட்சி மறுத்து விட்டது. கள்ளர், மறவர் கருணாநிதியைப் பணிய வைத்துக் தங்களை 'மூவேந்தர் பரம்பரை' என்று வெற்றுப் பெருமை பேச வைத்தார்கள் (பக்கம் 99-100).

14. இது நடந்த உண்மை. இந்த ஒற்றுமை தேவையா? அது எதற்காக? களத்தில் கள்ளர், மறவரை வெட்டிச் சாய்த்த மள்ளர்களின் வீர வரலாற்றை, 'ஆதிக்கத்தை வீழ்த்திய தலித்துகளின் எழுச்சி' என்ற பறையர்களின் வீரம்போல காட்டிக் கொள்வதையும், சமூக விரோதிகள் பறையர், சக்கிலியர் வாய்களில் மலம் திணித்தாலோ, சிறுநீர் கழித்தாலோ அதை ஒட்டுமொத்தத் 'தலித்துகளுக்கான அலவம்' போல காட்டி, அது, மள்ளர்களுக்கான இழிவு, போன்ற தோற்றத்தை ஏற்படுத்துவதை இனிமேலும் ஏற்க முடியாது. தொடர்ந்து ஏமாறவும் முடியாது (பக்கம் 118 -119).

15. மாட்டிறைச்சி உண்பது பறையர் சமூகத்தின் உணவு, முறையாக உள்ளது (பக்கம் -119).

16. செத்தமாடு தின்பவர்கள் சக்கிலியர்கள். மள்ளர்கள் பெரும்பான்மை சமூகம். சக்கிலியர்கள் சிறுபான்மைச் சமூகம். மள்ளர்கள் போக்குணம் மிக்க ஒரு படைவழிச் சமூகம். சக்கிலியர்கள் அடிமைத் தொண்டுழியம் செய்யும் சமூகம். பயிற் தொழிலும், போர்த் தொழிலும் மள்ளர்களின் குலத் தொழில். சாக்கடை வழித்தலும், செருப்புத் தைத்தலும் சக்கிலியரின் குலத் தொழில். நெல் உற்பத்தி செய்கின்ற மள்ளர்களும், மலம் அள்ளுகின்ற சக்கிலியர்களும் எப்படி ஒன்றாகும் (பக்கம்-120).

17. திருவிதாங்கூர் பகுதிகளில் சாணார் சாதிப் பெண்கள் மேலாடை அணியக்கூடாது. மேலாடை அணிந்தால் முலைவரி கட்ட வேண்டும். சாணார் சாதிக் கர்ப்பிணிப் பெண்கள் கூட மாடுகளுக்குப் பதிலாக ஏர்க்கலப்பையில் அம்மணமாகப் பூட்டப்பட்டுத் தொளி உழவு செய்யப் பணிக்கப்பட்டனர். கொத்தடிமைகளாக நடத்தப்பட்ட சாணார் சாதிப் பெண்கள் தங்களின் குழந்தைகளுக்குப் பாலுட்டிக் கூட அனுமதிக்கப்படவில்லை. எத்தகைய கொடிய நிலை அது. 'காணாமை' என்ற கொடிய நோய்க்கு ஆளான சமூகம் சாணார் சமூகம். சக்கிலியனைத் தொட்டால் தீட்டு, காணாணைக் கண்டாலே தீட்டு என்று சொல்லப்பட்ட காலம் அது (பக்கம் 122-123).

18. ஆங்கிலேயர் ஆட்சியில் குற்றப்பரம்பரையினராகவும், அ.தி.மு.க. ஆட்சியில் சீர்மரபினராகவும், அடையாளப்படுத்தப்பட்ட கள்ளர், மறவர்கள் கூட இன்று 'மாடசாமித் தேவர் மிட்டாய்க்கடை' 'பொன்னுசாமித் தேவர் பரோட்டாக் கடை' என்று கடைகள் வைக்க முடிகிறது (பக்கம் -128).

31. Upon perusal of the contents extracted above and the contents of the preface and certain other contents filed as typed set by the second respondent, we see the hard work of the petitioner but at the same time, putting ourselves in the position of the readers. The petitioner, whose object is claimed to be to uplift the people of his caste, has lost his way in the middle and made provoking statements against many other communities, which are unwarranted, in the context and present day scenario. In the said process, he has also made allegations against deceased leaders and freedom fighters, which by itself is immoral. There cannot be any justification in lifting a community by demeaning other communities. Coming from a land which gave us Poongunranar whose statement "Yadumoore Yavarumkelir" now displayed in United Nations Organisations, has now after several years of democratic rule flayed the erstwhile rulers, who defeated the Pandiyas and treated their descendants as migrants. The voice now pitched by the petitioner, according to us, is against Articles 19(1)(d) and (e) and 21 of the constitution of India. That apart, in the preface, the petitioner has called upon his community people to come together by honing their fighting skills to avenge their fall and fight, to retrieve their land lost to people of different castes and language and vouch for a separate country, indirectly, which again could amount to meddling with the sovereignty, public order and peace within the State. Under the shield of democracy and right to freedom of speech and expression, there cannot be any threat to the unity and public order. It would be very well within the right of the State to curb any such separatist ideologies to protect the sovereignty of the country and in the interest of the security of the State.

32. In the Judgment reported in 2012 5 SCC 1 (In Re: Ramlila Maidan Incident dated 4/5.06.2011 v. Home Secretary, Union of India and Others), the Hon'ble Supreme Court while dealing with "public order" and "right and duty of a citizen", has held as under:

"36. As already noticed, rights, restrictions and duties coexist. As, on the one hand, it is necessary to maintain and preserve the freedom of speech and expression in a democracy, there, on the other, it is also necessary to place reins on this freedom for the maintenance of social order. The term "social order" has a very wide ambit. It includes "law and order", "public order" as well as "the security of the State". The security of the State is the core subject and public order as well as law and order follow the same.

39. There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51-A are of relevant consideration. Article 51-A requires an individual to abide by the law, to safeguard public property and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant. Part IV of the Constitution relates to the directive principles of the State policy. Article 38 was introduced in the Constitution as an obligation upon the State to maintain social order for promotion of welfare of the people. By the Constitution (Forty-second Amendment) Act, 1976, Article 51-A was added to comprehensively state the fundamental duties of the citizens to complement the obligations of the State. Thus, all these duties are of constitutional significance.

44. The distinction between "public order" and "law and order" is a fine one, but nevertheless clear. A restriction imposed with "law and order" in mind would be least intruding into the guaranteed freedom while "public order" may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, "security of the State" is the paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of "public order" and "law and order". However stringent may these restrictions be, they must stand the test of "reasonability". The State would have to satisfy the court that the imposition of such restrictions is not only in the interest of the security of the State but

is also within the framework of Articles 19(2) and 19(3) of the Constitution.”

33.The petitioner, who claims to have made a research for seven years before publishing this book by reading and researching various textures and antiques, would not have invited this trouble if followed the golden words of great saint Thiruvalluvar, who has spelled his words of wisdom as follows:

100. இனிய உளவாக இன்னாத கூறல்  
கனி இருப்பக்காய் கவர்ந்தற்று.

To say harsh words when you have nice words, is like plucking an unripe fruit when there are ripe ones.

461. அழிவது உம் ஆவது உம் ஆகியவழி பயக்கும்  
ஊதியமும் சூழ்ந்து செயல்.

Without analysing what would be gain or creation or what would be the loss and what would be result, one must not commence a task.

642. ஆக்கமுங் கேடும் அதனால் வருதலால்  
காத்தோம்பல் சொல்லின்கட் சோர்வ.

As speech can create and destroy; one should ensure that there is no blemish in his speech.

Had the petitioner shown restrain and struck on to the object now claimed without using such language against other caste and linguistic people, the impugned orders would not have been passed and the petitioner would have been entitled to get complete protection under Article 19 (1) (a) of the constitution.

34.The State has already witnessed many instances of disruption of public order and peace. Several lives have been lost. The voice of the petitioner, in the opinion of this Court, is in the nature of provoking his community against others and challenging others on their superior social status. Though the petitioner has a right to express his mind, he also has a duty not to breach the line. It is also worthwhile to point out the conduct of the petitioner, who, after the first book was banned and when the writ petition was in vogue, with the extracts and references from the first book, penned the second book as a sequel, which invited the second ban order.

35.Similarly, the petitioner has vouched for a cry to

declassify pallars from the scheduled caste claiming their superiority over others. There is nothing wrong in that, but for the language employed by the petitioner, who in the process of reflecting historical references to their superiority, has much ventured against the image of other communities in the scheduled caste itself and in the Backward classes. As pointed out already, times have evolved and the classifications that exist now have been in vogue for several decades. The occupation of a particular caste at the time of its origin and its relativity now are two different platforms, which are beyond comparison. In the present scenario, a person with a surname depicting his caste may not be employed in the field associated with his caste. Therefore, it is not a social issue, which the petitioner has raised by way of a novel, but what was penned is only a personal agony on the tantrum of his fallen kingdom. According to the petitioner, what was penned by him in both the books, are historical facts, which by itself cannot give any right to the petitioner to demean the other communities and women. At this juncture, it is relevant to refer to the observation of the Rajasthan High Court in the judgment reported in AIR 1951 Raj 113, relied on by the learned Advocate General, which is extracted hereunder:

“ When the words used are such as to have a clear tendency to promote class hatred”.....

It is not necessary for the prosecution further to establish that the writer had the intention to promote such hatred.”

36. History of this land has always been a matter of debate as its roots have not been identified till date. Not often would two historians agree on the same point. This Court partially agrees that there has been a suppression of many historical facts in shaping this country to its present day, but it cannot be said that those were at the behest of national leaders or just against the interest of the community of the petitioner alone. The ploy to divide and rule was harvested by the colonial rulers, to which the citizen of this country had fallen prey. Different and divergent views are available on the same subject. For instance, the Sanskrit word “dravida” which has been used by many populist political parties, has been given different meanings by historians. The term was in vogue even before 1500 years. One sect calls it a land or place, where three seas converge. Another sect interpreted the same to be land to the south of Vindhya. It is also used to denote the people of South India more particularly the people of Tamil Nadu. The word “ Adidravida” would mean ancient or aboriginal inhabitants of the dravidian landscape. It was first used by Iyothee Thass in 1890's and propagated and expanded by E.V.Ramasamy Naicker, who fought for abolishment of caste system and the discriminations

prevalent at that point of time.

37. As rightly contended by the Learned Advocate General, the benefits of being caste under the Schedule are enjoyed by the members of the petitioner's community. The petitioner cannot call himself as the voice of his community. Moreover, the notification or de-notification of a caste from the schedule or another category are within the domain of the Ministry of Social Justice and Empowerment. The decisions are still taken on the basis of social and economic factors by the National Commission for Scheduled Castes and the National Commission for Backward classes. It is always open to the petitioner to approach the appropriate Ministry.

38. Another point that was raised before us is that no opportunity was afforded to the petitioner before the impugned orders were passed. The purpose of Section 95 Cr.P.C is to prevent the disruption of public harmony, tranquillity and peace, when it is instigated in the objectionable material in the opinion of the Government. It is sufficient, if the contents cause sufficient apprehensions about the incitement of violence between different classes of people. It is not a punitive action. It is an imminent action failing which, the purpose of Article 19 (2) and Section 95 of Cr.P.C would become redundant. Therefore, we are of the view that while invoking the powers under Section 95, it is not necessary to hear the author of the book before passing orders and hence, the orders are not arbitrary. In this regard, it is appropriate to look into the judgment reported in 1985 Cr.L.J 797 (Pat), wherein, it has been held thus:

" The purpose here is preventive and not punitive. In view of the large scale public mischief apprehended, it is sought to be nipped in the bud by straightaway forfeiting the publications."

In the decision reported in 1993 Cr.L.J 2040 (P& H), the Punjab and Haryana High Court has observed as follows:

"It is not practicable to give opportunity of being heard to the person concerned before passing the order of forfeiture under Section 95."

40. During the course of hearing, after perusal of the objectionable areas and the typed set of papers, it was pointed out to the petitioner that several portions in both the books

are abusive against other castes and in the nature of spreading hatred and disharmony, thereby posing a threat to public order and security of the State. Thereafter, the petitioner has filed two separate memorandums, accepting to make certain alterations in the books. In reply, the State has raised objections to some alterations in certain portions, stating that the new alterations would not dissolve the objections. As most of the alterations have been accepted by the State, there cannot be any justification for the forfeiture to continue. Under such circumstances, the impugned orders are liable to be set aside, provided that the petitioner complies with the references and bibliography as pointed out by the first respondent, in addition to delete the provoking contents calling for a fight for separate land and against other linguistic people and castes. The petitioner must comply with the above directions by submitting a representation reflecting the corrections with a copy of corrected book and on such production, the first respondent must pass orders lifting the forfeiture within two weeks from thereon.

41. With the above directions, both the writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary to Government  
Public Department (SC)  
Fort St. George, Chennai -9.

2. The Principal Secretary to Government  
Home Department (Courts VI A)  
Fort. St. George  
Chennai 9.

+1 CC to Mr. P. Vijendran, advocate sr 74296.  
+1 CC to Mr. R. Sreerangan, advocate sr 74867.  
+1 CC to Govt. Pleader sr 74728.

W.P.Nos.17615 of 2013 and 31237 of 2016

RJ(CO)

SP(07/11/2017)