Misuse of Section 124

Why in news?

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A Tamil magazine editor was recently arrested under Section 124 of the IPC.

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What was the controversy?

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- The arrest was based on a published report about Governor and his Secretary holding several meetings with an arrested assistant professor few months ago.
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- The magazine based its report on this issue, not on a sting operation, but on police evidence.
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- However, the Tamil Nadu Governor’s office had complained to the police, seeking to book the editor under Section 124 of IPC.
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- They cited that the offending articles express an “intention of inducing or compelling the Governor to refrain from exercising his lawful powers”.
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- **Section 124** applies to assaulting high constitutional functionaries such as the President and the Governor with “an intent to compel or restrain the use of any lawful power”.
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- It was intended to cover cases where these functionaries are prevented from exercising their power through criminal force, attempts to overawe, or wrongful restraint.
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- The offence shall be punished with 7 years imprisonment and shall also be liable to fine.
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- It is a Non-Bailable, Cognizable offence and not compoundable.
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What was the wrongdoing?

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- The Governor had also invoked Section 124 previously when a state party staged black flag demonstrations at sites where he held meetings with district-level officials.
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- It is unlikely that a black flag demonstration can attempt to "overawe" the Governor in a manner that restrains his office from exercising power.
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- Overawe would suggest the commission of an offence that poses a real danger to the exercise of authority.
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- Hence, to extend the meaning of "overawe" to a mere protest or a work of journalism amounts to misuse of the intended provisions.
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- In the recent case, the Metropolitan Magistrate in Chennai realising the absurdity of the prosecution's case, declined to jail the accused editor.
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What are the precedences in this regard?

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- A well-defined law has been laid down by the Supreme Court's 1994 judgement in **R Rajagopal vs State of Tamil Nadu**, popularly known as the Auto Shankar case.
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- According to that, public figures have to satisfy a very high threshold to claim privacy and the right to reputation for demanding prior restraint of a publication.
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- Therefore, it would be very difficult for the governor in this case to demand prior restraint of the news article.
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- Also, prior restraint has a chilling effect on press freedom, violating **Articles 19(1) & 361A**.
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- In contrast, in the **Subramanian Swamy case**, the apex court stated that a person's right to reputation takes precedence over the media's right to

report.
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- Countries like US have recognised that the complainant of prior restraint must prove the presence of actual malice in order to proceed with a defamation suit against a media house.
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- But Indian courts are yet to adopt this standard.
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What should have been done?

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- In a period of five years between 2011 and 2016, over 200 criminal defamation suits against a vast swathe of journalists and media houses for their criticism of governmental actions and policies.
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- The governor could have used other forms of legal redress available to him rather than going for this provision.
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- By citing them to seek registration of a Section 124 case against the magazine’s Editor, journalists and employees, the Governor’s office has only turned the spotlight on itself unnecessarily.
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- Hence, the governor could do himself a favour by withdrawing the complaint, since it is unlikely the TN police will take such a decision on its own.
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Source: The Hindu

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Quick Facts

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Categories of Offences

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- If an offence is cognizable, police has the authority to arrest the accused without a warrant and to start an investigation with or without the permission of a court.
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- Otherwise police does not have the authority to arrest the accused without a warrant and an investigation cannot be initiated without a court order.
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- If an offence is bailable, police has the authority to release the accused on bail on getting the defined surety amount along with a duly filled bail bond at the concerned police station.
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- Otherwise arrested person has to apply for bail before a magistrate or court
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- If an offence is compoundable, a compromise can be done between the accused and the victim, and a trial can be avoided.
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- Otherwise, no compromise is allowed between the accused and the victim except under certain situations, where the High Court or the Supreme Court have the authority for quashing a matter.
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