

CS SCJ : 1033/23

Naresh Baliyan Vs M/s Times Now Navbharat

06.09.2023

Present : Sh N.C. Sharma, Sh Joginder Sehrawat, Ms Anjali Vashist, Ms. Varnika Sharma, Mr Pulak Kathpalia, Ld counsels for plaintiff.
Sh Balbir Singh Jakhar, Sh Vikram Singh Jakhar, Sh Neeraj Jakhar, Sh Jitender Sapra, Sh Akshayveer Sehrawat, Ms. Vaishali Pawar, Ld counsels for plaintiff. (through VC)
Sh Ronnie S. Brara, Ld counsel for defendant. (through VC)

Orders during the course of the day.

(Ajay Kumar Malik)
ASCJ cum JSCC cum Guardian Judge
Dwarka Courts: New Delhi
06.09.2023

(At 4.00 pm)

Present: None.

1. Vide this order, I shall dispose of the application under Order 39 Rules 1 & 2 CPC filed on behalf of the plaintiff thereby seeking ad interim ex parte injunction and restraining the defendant and his assignees including its agents, associated TV Channels, associated group channels, associated media of any kind including print and electronic, executors, administrators, representative agents etc. against telecast/broadcast/printing of any such news spread by Kapil Sangwan @ Nandu of Nandu Gang directly by him or through any person/media etc. till disposal of present suit. Arguments have already been heard.

2. Defendant had preferred petition against impugned ad-interim order dated 17.08.2023 and 18.08.2023 passed by this court and vide judgment in CM(M) 1356/23 Hon'ble High Court had disposed of the application with the

direction that if the petitioner/defendant approached the Ld Trial Court on or before 28.08.2023 by filing its reply then this Court shall adjudicate and pass final orders on the interlocutory application filed by plaintiff on merits and in accordance with law, within one week of filing of reply.

3. The case of plaintiff is that plaintiff is engaged in social work and reforms and is elected as member of Delhi Legislative Assembly in 2015 and again in 2020 & has achieved a great reputation in the vicinity due to his hard work and good conduct. It is stated that plaintiff has received threats from gangsters Sh Kapil Sangwan @ Nandu of Nandu Gang for which plaintiff has lodged police complaints. It is stated that in the noon of 17.08.2023 plaintiff and family of plaintiff were shocked on the news broad casted by the defendant on news channel under heading '*Sarji ka Vidhayak Gangster ka Sahayak*' and the said news was also available on Youtube channel of defendant and was broadcasted on the channel as well as other electronic social media contents. It is stated that the said false news caused great loss to the reputation of plaintiff as well as his family and plaintiff suffered mental agonies, torture & lowered his status in the society as well as between his colleagues.

4. It is submitted by the learned counsel for the plaintiff that plaintiff has suffered mental torture, harassment due to the aforesaid news. It is stated that plaintiff is a social worker and has great reputation in the society but after the broadcast of the aforesaid news he was treated by many news channel as a criminal resulting in irreparable loss to the reputation of plaintiff in the society. It is stated that the aforesaid news be removed or deleted to avoid any further loss to the social life of plaintiff and his family members.

5. In reply to the application u/o 39 Rule 1 and 2 CPC it is averred by defendant that defendant is more than 100 years old media house and has

earned goodwill and reputation for discharging its duties as a media house. It is stated that the defendant is operating its news channel etc. has a right to broadcast the issues of public importance, current affairs & news and the public has right to know about such issues. It is stated that the defendant is entitled to carry/telecast the clip/programme in question which is based upon truth and in exercise of its right of fair comment also in public interest. The news clip and its content are based upon true facts in relation to a matter of serious concern deserving to be known to public.

6. (a) Ld counsel for the defendant relied on the judgment titled as ***Sardar Charanjit Singh Vs Arun Purie & Ors. 1983(4) DRJ86*** and argued that the defendants intended to plead justification and stated that there is recognized defence in favour of defendant. Per Contra, it is submitted on behalf of plaintiff that plaintiff himself is victim of gangster Nandu and has already filed the complaint against gangster Nandu. It is also submitted that the defendant has not verified the facts from plaintiff and very irresponsibly broad casted the non existing facts against the plaintiff. It is also submitted on behalf of plaintiff that the defendant had broad casted the defamatory content against the plaintiff which defendant alleged to receive from gangster Nandu against whom the police has already issued red corner notice and defendant has also not verified that whether the said voice of gangster Nandu is of gangster Nandu or of somebody else so the defence of defendant will fail.

(b) The defendant also relied upon the judgment titled as ***Kushwant Singh and Anr. Vs Maneka Gandhi*** and put his reliance on Bonnard Rule and argued that the interlocutory injunction will not be granted if there is any doubt as to whether words are defamatory or if the defendant swears that he will be able to justify the words complained of. It is further argued that the rights enshrined under Article 19(1)(a) are sacrosanct and cannot be violated by an individual or State. Per Contra, it is submitted on behalf of plaintiff that

in the above case the court has itself mentioned that the word stated “high thinking and high learning” which was stated to be moralistic view and not the legal view. It is further stated on behalf of plaintiff that in the said case the interim orders granted by Ld Single Judge is pre-publication injunction whereas in the present matter the plaintiff has approached to court after the broadcasting of false defamatory material against the plaintiff and even without verification of same from the plaintiff. It is further submitted that mere having the right to claim damage by the plaintiff does not entitle defendant to get distracted and derail from the duties attached with the rights granted under Article 19(1)(a) of the Constitution.

(c) It is further argued by Ld counsel for defendant that in the case titled as ***Tata Sons vs Greenpeace International, 2011*** it has been observed by the Court that in an action for defamation a Court will not impose a prior restraint for publication unless it is clear that no defence will succeed at the trial. Per Contra, it is submitted by ld counsel for plaintiff that the above ratio do not apply to the present case as it is not the matter of pre publication but the defendant has already broadcasted its clip and thereafter, the plaintiff came to know about that clip and approached to the Court.

(d) The defendant also relied upon the judgment delivered in the case titled as ***'Raja Gopal @ RR Gopal vs State of T.N, & Ors.*** and submitted that the publication related to Acts or conduct of public officials would not entitle the officials to evoke the right of privacy and claim damages nor the Govt, local authorities exercising governmental power entitle to sue for damages. Per Contra it is submitted on behalf of plaintiff that the defendant not broadcasted the work done by plaintiff in his official capacity for showing or apprising the public about its drawbacks or illegalities whereas the defendant telecasted the contents against the plaintiff without verifying from the plaintiff and all that done in the name of person against whom the police has already issued red

corner notice and whereabouts of gangster Nandu is not known to anybody then how do defendant came to know that and lead assertion through the voice and contents of talk with gangster Nandu.

(e) It is also argued by Id counsel for defendant that in the case of ***Dr. Shashi Tharoor vs Arnab Goswami & Anr.*** it was held that it is the right of media to comment on administration of justice before, during and after trial. Per Contra, it is submitted by Id counsel for plaintiff that in same case the above said rights of the media are guided through the principle that there should not be violation of presumption of innocence as the presumption of innocence and a fair trial are the heart of criminal jurisprudence and important facets of democratic polity that is governed by Rule of Law.

(f) The defendant further relied upon the judgment passed in ***Mother Dairy Foods and Processing Ltd. Vs Zee Telefilms Ltd.*** and argued that it was held in the above case that there is need to take care that the injunction order, even if granted does not result in ‘gag order’ or ‘super injunction’.

(7)(a) Ld counsel for plaintiff relied upon the case and judgment passed by Hon’ble High Court of Delhi in the case titled as ***Patanjali Ayurved Ltd. Vs Sobhagya Media Pvt. Ltd.*** delivered by Mr Justice V Kameshwar Rao wherein not only restraintment orders were passed against publication of false and defamatory material but the directions were also passed to remove/restrict/access/block the URLs which contain the defamatory video of part thereof for Indian domain.

(b) The plaintiff also relied upon the judgment passed in the case titled as ***Hari Shankar Vs Kailash Narayan & Ors. 1981*** and held that the reasoning of the Appellate Court that the reputation can be compensated by paying him damages in terms of money is not easy to accept and the submission that the

reputation of respectable citizen can be measured in terms of money then, it will amount to issue of licence against a citizen and asking him to take money as compensation for the injury he has suffered to his reputation. It was further held that Article 19 of Constitution of India does not give free hand under the guise of free expression and freedom of Press as a right to go on publishing defamatory matter which is a criminal act. It is further held the right guaranteed by the Constitution, it must be borne in mind is to all the citizens alike. The right in one certainly has a corresponding duty to the other and judged in that manner also the right guaranteed cannot but be a qualified one. That whether the matter is defamatory as alleged by the plaintiff and whether the plaintiff is entitled for any compensation will be decided by the trial Court finally.

(c) It is further argued by Ld counsel for the plaintiff that in the case titled as *Jay Amitbhai Shah Vs Rohini Singh & Ors.* hon'ble High Court of Gujarat has observed that the Trial court had initially granted ex parte restrain order against the defendants on 12.10.2017. After taking into consideration the say of the defendants, as already noted above, the Trial Court has arrived at the conclusion that, 'the defendants have failed to show any justification about the nexus of the Hon'ble Prime Minister with the increase in the business of the plaintiff's Company'. This was the basis of the impugned article. The Trial Court has also recorded its satisfaction to the effect that, '... the defendants have failed to show any direct or indirect nexus of association with Hon'ble the Prime Minister as regards the increase in the business of the plaintiff. The defendants have failed to show any justification to the effect that following the election of Narendra Modi as Prime Minister, the plaintiff has flourished.' On the basis of this satisfaction, the Trial Court has further noted that, 'the defendants therefore need to be restrained.'. On conjoint consideration of these aspects, this Court finds that, the initial restrain order dated 12.10.2017 was not required to be diluted by the Trial Court. The said order therefore

needs to be restored.

8. I have given my thoughtful consideration on the submissions made on behalf of the parties. The defence taken by defendant is yet to pass through the stage of evidence which obviously includes the chance to the plaintiff in form of cross examination of defendant witness. The defendant has not only broadcasted news against the plaintiff but also opened the discussion at national forum. Persons who participated in the debate were neither associates of gangster Nandu nor associates of plaintiff and they were not also the investigating agency to give any opinion at national level without verifying the facts themselves. Plaintiff is member of Assembly and the debate/discussion organized by the defendant is not in house discussion. Plaintiff himself has filed a complaint against Mr. Sachin Sangwan @ Nandu. Defendant himself mentioned in the written statement that matter is admittedly under investigation with the police of Special Cell Janakpuri. It is the admitted case where no facts/allegation were verified from the plaintiff regarding veracity of statements against plaintiff and defendant straight away broadcasted the news clip against the plaintiff. The defendant not observed the duties attached with the freedom enshrined under Article 19(1)(a) Constitution of India so there is prima facie case in favour of plaintiff. In the judgment relied by plaintiff it is already observed that nobody can be allowed to defame other on the grounds that the injury will be compensated with money. No money can compensate the injury to the reputation of a person so the plaintiff will suffer irreparable loss which cannot be compensated in terms of money, if the present application is not allowed. The defendant itself mentioned in the WS that the matter is under investigation with the police of Special Cell against Mr. Sachin Sangwan @ gangster Nandu. Nothing came on record that any FIR has been registered against the plaintiff for any such criminal activity of extortion etc. in connivance with Mr. Sachin Sangwan @ gangster Nandu so balance of convenience also tilts in favour of plaintiff.

9. For discussion above-stated, **the present application of the plaintiff under Order 39 Rules 1 & 2 CPC is allowed.** Defendant and his assignees including its agents, associated TV Channels, associated group channels, associated media of any kind including print and electronic, executors, administrators, representative agents etc. are restrained against telecast/broadcast/printing of any such news spread by Kapil Sangwan @ Nandu of Nandu Gang directly by him or through any person/media etc. till final disposal of present suit.

10. Put up for replication, admission-denial of documents and framing of issues on **12.12.2023.**

(Ajay Kumar Malik)
ASCJ cum JSCC cum Guardian Judge
Dwarka Courts: New Delhi
06.09.2023