

Radha Vs. the Superintendent

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Court : Chennai

Decided On : Nov-25-2014

Judge : S.Nagamuthu

Appellant : Radha

Respondent : The Superintendent

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 1-10-2009
CORAM THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM AND THE
HONOURABLE MR.JUSTICE R.SUBBIAH OSA Nos.230 and 231 of 2009 and MP
Nos.1, 2, 3 & 4 of 2009 in OSA230of 2009 and MP Nos.2 and 3 of 2009 in
OSA231of 2009 1.A.Raja 2.M.A.Parameswari .Appellants in both appeals vs
1.P.Srinivasan Publisher and Printer of Junior Vikatan Vasan Publications Private
Limited No.757, Anna Salai Chennai 600 002.

2.K.Ashokan Editor, Vasan Publications Private Limited No.757, Anna Salai
Chennai 600 002.

3.Saroj Ganpath Chief Reporter Junior Vikatan No.757, Anna Salai Chennai 600
002.

4.Prakash Jawadekar .Respondents in both appeals Original side appeals
preferred under Order 36 Rule 11 of Original Side Rules read with Clause 15 of
Letters Patent against the common order passed by this Court dated 20.7.2009

made in O.A.No.420 of 2009 and Application No.2919 of 2009 respectively in C.S.No.366 of 2009.

For Appellants : Mr.V.T.Gopalan Senior Counsel for M/s.P.Wilson Associates in OSA2302009 Mr.P.Wilson, Senior Counsel for M/s.P.Wilson Associates in OSA231209 For Respondents : Mr.R.Yashodvaradhan Senior Counsel for Mr.R.Sunilkumar COMMON

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.) These two intra Court appeals challenge a common order of the learned Single Judge of this Court made in O.A.No.420 of 2009 and Application No.2919 of 2009 in C.S.No.366 of 2009.

2.The Court heard the learned Senior Counsel for the appellants and also for the respondents.

3.Pending the suit in C.S.No.366 of 2009, a suit for permanent injunction and damages, O.A.No.420 of 2009 has been filed seeking ad-interim injunction restraining the respondents 1 to 3 from in any way printing, publishing and circulating the defamatory news items and the photographs of the plaintiffs' family or publishing any caricature or fudged photographs of the plaintiffs or the photographs of the plaintiffs' minor daughter in their bi-weekly magazine "Junior Vikatan" in any manner causing damages to the reputation of the plaintiffs without seeking any clarification from the plaintiffs, while Application No.2919 of 2009 was filed by the respondents seeking to vacate ad-interim injunction originally granted on 28.4.2009 in O.A.No.420 of 2009.

4.The appellants/plaintiffs sought the above interim relief along with an affidavit containing the following averments: The news items or self claimed write-ups published in the bi-weekly magazine of the respondents 1 to 3 "Junior Vikatan" on 16.4.2008, 19.10.2008, 19.11.2008, 26.11.2008, 3.12.2008, 7.12.2008 and 24.12.2008 in respect of the appellants are highly derogatory, defamatory, misleading and baseless.

The manner in which the repeated publications are made about Spectrum and the substantial coverage given for such frivolous issue by the respondents 1 to 3 will establish the continuous malafide attitude of them to tarnish the appellants' image and harm their reputation.

Further the defamatory and derogatory interview given by the fourth respondent and published by the respondents 1 to 3 on 24.12.2008 is yet another damaging news article.

It would undoubtedly prove their mischievous conduct that "it is something more than what a normal weekly magazine would do".

Further more the issue relating to Spectrum is already sub-judice before the Delhi High Court in W.P.Civil No.7815 of 2008, and under the circumstances, the act of the respondents 1 to 3 would amount to interference with the proceedings before the Delhi High Court.

In fact the respondents 1 to 3 have miserably failed in their duties and have acted as a puppet in the hands of certain disgruntled politicians.

The news article dated 24.12.2008 and photographs published have caused severe damage to the reputation of the second appellant wife besides caused mental agony not only to her, but also to their minor daughter.

Thus the appellants have made out a prima facie case for granting interim injunction.

Balance of convenience is also in their favour.

If an order of interim injunction is not granted, they will be put to great irreparable loss and hardship.

Hence the application was to be ordered.

5.The respondents contested the application by filing a counter stating that the suit itself is not at all maintainable as it is well settled that public officials cannot maintain any action for damages with respect to acts and conduct relevant to the

discharge of their public duties; that the plaint does not reproduce the articles or the portions which are purportedly defamatory; that the interim application itself is in violation of the fundamental right guaranteed under Article 19(1)(a) of the Constitution of India to publish and disseminate news to the people of India in public interest; that even the news report that has been published concerns only the acts and conduct of the fiRs.appellant relevant to the discharge of his official duties and the post held by the second appellant in companies; that a number of prominent newspapers like the New Indian Express and The Pioneer had raised the issue of impropriety in allocation of spectrum space; that the press has a right to comment on the discharge of duties by a public official; that the fiRs.appellant is very well aware that the particular photograph is in the public domain and by no stretc.of imagination one can come to the conclusion that the publication of the photo had invaded the privacy of the fiRs.appellant's minor daughter or caused mental agony or embarrassment to all of them; that the respondents have only fairly commented on a public issue regarding improper allocation of 2G spectrum services by the Government of India which the people of India have a right to be informed of; that the freedom of press is part and parcel of the right to freedom of speech and expression which includes the freedom to communicate, advertise, publish and disseminate information to the citizenry of our nation who have a right to know and receive information of any event of national importance; that the public officials holding posts cannot escape comments relating to the discharge of their official duties; that it is pertinent to note that the articles were based on proceedings in Parliament interviews and matters in the public domain; that the matters were also scrutinized before publication; that every effort was taken to probe the veracity of various opinions; that a reading of the news items will never give the impression that the news items are malicious and have crossed all bounds of decency; that the balance of convenience is also in favour of the respondents; that it needs to be reemphasized that no allegation on the private life of the appellants has been commented upon; and that under the circumstances, interim injunction originally granted has got to be vacated, and the application for interim injunction be dismissed.

6.The learned Single Judge after hearing the contentions put forth and looking into the materials available, dismissed O.A.No.420 of 2009 and also vacated the ad-

interim injunction originally granted, and apart from that, the fiRs.applicant in O.A.420 of 2009 was directed to pay a sum of R.10,000/- to the fiRs.respondent therein.

Aggrieved, the plaintiffs have brought forth these two appeals.

7.Advancing arguments on behalf of the appellants, the learned Senior Counsel Mr.V.T.Gopalan and Mr.P.Wilson would submit that the finding of the learned Single Judge that all the news items do not relate to their private life and are related to the conduct of the appellants in public domain is against the documentary evidence and pleadings; that the respondents have published the family photographs of the appellants and have also published damaging news items in relation to the second appellant's private employment; that there was no necessity for publishing minor child's photograph; that the undertaking of the respondents in this regard is not in a proper format by way of an affidavit; that it is pertinent to point out that the second appellant is not a public figure and she is neither in a public domain; that under the circumstances, there was no necessity for the respondents to publish about the second appellant which is against the public morality and public decency; that fudging photographs in a manner which tended to be without any public decency, obscene, immodest, highly mischievous and giving raise to innuendo cannot be permitted on the grounds of press freedom; that such fudging of photographs is a deliberate distraction of the truth which was intentionally made for the purpose of creating a very bad opinion about the fiRs.appellant in the minds of the readers of the magazine; that while the fiRs.appellant is holding the office of Cabinet Minister in the Union Government, it cannot be said that his wife, the second appellant, also holds any such public office; that under the circumstances, publishing the photograph of the second appellant also cannot be justified at all; that the right guaranteed under Article 19(1) is not absolute and subject to Article 19(2).that when it affects the morality and decency or intrudes into privacy and family life of the appellants and reveals the identity of a minor right yet holding that Article 19(1)(a) is supreme amounts to non-appreciation of law relating to the freedom of expression; that no person or citizen has right to make a defamatory statement; that the loss of reputation cannot be compensated only by way of payment of damages; that since the

articles impugned were per se defamatory made recklessly, the appellants are entitled for an order of absolute injunction; that the respondents took no steps to establish that all the said articles impugned are true and that it is the exact interview given by the fourth respondent; that one human right cannot claim preference over another human right; that in as much as the respondents disown any act of reasonable verification in relation to the publication made even in relation to the fiRs.appellant, the learned Single Judge by applying the decision reported in (1994).SCC632ought to have granted an order of absolute injunction; that the statements and the articles are deliberate distortions of the facts without the least verification; that in such circumstances, the continuing malicious attitude of the respondents should be injuncted; that no specific reason has been assigned in the impugned order as to why the award of exemplary costs of Rs.10000/- has been made even without a prayer from the respondents; that the same is unwarranted and uncalled for, and hence the order of the learned Single Judge has got to be set aside and interim injunction be ordered.

8.The learned Senior Counsel for the respondents Mr.R.Yashodvaradhan reiterated the very same contentions put forth before the learned Single Judge.

9.As could be seen above, the appellants as plaintiffs have filed the suit claiming damages of Rs.1 crore to the fiRs.plaintiff and Rs.25 lakhs to the second plaintiff from the defendants 1 to 4 along with interest in respect of the alleged defamatory publications made in the bi-weekly magazine Junior Vikatan on the given dates.

Apart from that, they have also asked for a permanent injunction to restrain the defendants from printing, publishing and circulating the defamatory news items and the photographs of the plaintiffs' family or publishing any caricature or fudged photographs of the fiRs.plaintiff or the photographs of the plaintiffs' minor daughter in their bi-weekly magazine "Junior Vikatan" thereby causing damage to the reputation of the plaintiffs without seeking any clarification from the plaintiffs.

10.At the outset, it has to be stated that the respondents have candidly admitted all those publications in the bi-weekly magazine "Junior Vikatan" on the dates namely 16.4.2008, 19.10.2008, 19.11.2008, 26.11.2008, 3.12.2008 and 24.12.2008.

The case of the plaintiffs/appellants is that by continuously publishing the said defamatory news items, the respondents have defamed the plaintiffs and have also harassed them with the said frivolous and vexatious defamatory news articles, and it was intended to satisfy the political opponents of the plaintiffs and also to boost the sale of the magazines.

On the contrary, what was contended by the respondents before the learned Single Judge and equally here also is that those publications were only the comments and criticisms concerning the acts and conduct of the first appellant in the discharge of his public duties as a Union Cabinet Minister and also the position held by the second appellant as a Director of two companies, and those publications were actually based on the proceedings in the parliament, and also during the relevant time, the second appellant was a Director during which period the spectrum space was allotted to the company, and thus it was neither defamatory nor intended to defame the appellants.

11. Insofar as the claim of damages made by the appellants/plaintiffs in the suit as stated supra, the same has got to be decided by the trial Court after evidence was let in and on appreciation of the same.

Whether the publications made were statements of truth and bonafide as put forth by way of defence plea also could be decided on appreciation of evidence.

12. The appellants/plaintiffs have also sought for an interim injunction which was in the line of permanent injunction to restrain the defendants from printing, publishing and circulating the defamatory news items and the photographs of the plaintiffs' family or publishing any caricature or fudged photographs of the first plaintiff or the photographs of the plaintiffs' minor daughter in their bi-weekly magazine "Junior Vikatan" thereby causing damage to the reputation of the plaintiffs without seeking any clarification from the plaintiffs as stated above.

Hence the question that would arise for consideration at this initial stage would be whether the plaintiffs/appellants have made out a prima facie case and whether balance of convenience is in their favour to grant an order of interim injunction.

Before advertent to the factual position, it would be fit and proper to look into the settled principles of law made by the Apex Court and also this Court.

13. The Apex Court has held in a decision reported in (1994). SUPREME COURT CASES 632 (R. RAJAGOPAL ALIAS R. R. GOPAL AND ANOTHER V.

STATE OF TAMIL NADU AND OTHERS. as follows: "26. We may now summarise the broad principles flowing from the above discussion: (1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21.

It is a right to be let alone.

A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical.

If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.

Position may, however, be different, if a person voluntarily thrusts himself into controversies or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records.

This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)], an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above indeed, this is not an exception but an independent rule.

In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties.

This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth.

In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true.

Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages.

It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above.

It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media."

14. This Court had an occasion to follow the above decision in a case reported in (2006) 2 M.L.J.689 (R.RAJAGOPAL @ R.R.GOPAL @ NAKKHEERAN GOPAL AND ANOTHER V.

MS.J.JAYALALITHA AND ANOTHER) and has held as follows: "29. The fundamental right of freedom of speech is involved in these proceedings and not merely the right of liberty of the press.

If this action can be maintained against a newspaper, it can be maintained against every private citizen who ventures to criticise the ministers who are temporarily conducting the affairs of the Government.

In a free democratic society those who hold office in Government and who are responsible for public administration must always be open to criticism.

Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind.

As observed in Kartar Singh's case (supra) the persons holding public offices must not be thin-skinned with reference to the comments made on them and even where they know that the observations are undeserved and unjust, they must bear with them and submit to be misunderstood for a time.

At times public figures have to ignore vulgar criticisms and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same.

In the instant case, the respondents have already chosen to claim damages and their claim is yet to be adjudicated upon.

They will have remedy if the statements are held to be defamatory or false and actuated by malice or personal animosity.

30.As observed in R.Rajagopal's case (supra) the right to privacy has two aspects which are but two faces of the same coin.

FiRs.the general law of privacy which offers a tort action for damages resulting from an unlawful invasion of privacy and secondly, the constitutional recognition given to the right to privacy which protects personal privacy against unlawful Government invasion.

Though the right to privacy can be characterised as a fundamental right, as held in R.Rajagopal's case (supra) it is not an absolute right.

In Time, Inc v.

Hill 385 US374it was pointed out that in the case of public officials, insofar as their official function is involved, they are substantially without a right to privacy and factual error and content defamatory of official reputation or both, are insufficient for the award of damages for false statements unless actual malice knowledge that the statements are false or reckless disregard of the truth is alleged and proved.

In a democratic set up a close and microscopic examination of private lives of public men is the natural consequence of holding of public offices.

What is good for a private citizen who does not come within the public gaze may not be true of a person holding public office.

What a person holding public office does within the four walls of his house does not totally remain a private matter.

We agree with Mr.Jothi that the scrutiny of public figures by media should not also reach a stage where it amounts to harassment to the public figures and their family members and they must be permitted to live and lead their life in peace.

But the public gaze cannot be avoided which is a necessary corollary of their holding public offices.

31. We are also unable to accept the submission advanced by Mr. Jothi that the appellants should be asked to seek prior verification from the respondents before publishing any articles and publish the denial, if any, of the respondents.

According to Mr. Jothi rule of prior verification is laid down in R. Rajagopal's case (supra). We are afraid that the submission of the learned counsel is based on total mis-interpretation of the observations of the Supreme Court.

The Supreme Court has not laid down that the prior verification of the facts is must in all such cases.

All that the Supreme Court indicated is that the proof that the member of the press or media acted after a reasonable verification of the facts would be sufficient.

However, at the same time, it must be noted that the Supreme Court in R. Rajagopal's case (supra) has clearly held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education, among other matters and none can publish anything in reference to the above matters without his/her consent whether laudatory or critical."

15. It would be quite clear that there is no law empowering the State or its officials to prohibit or to impose a prior restraint upon the press or media and when a person is holding a public office, the comments and criticisms cannot be avoided since it is a necessary corollary.

If such criticisms are attempted to be avoided, it would amount to political censorship.

The acts done by a person in public life could be categorized as private and public.

The acts and conduct of a person who holds office in Government and responsible for public administration are always open to criticism.

When a publication is made in the press commenting or criticising the acts and conduct of a person which is connected to his public office and life, it cannot be made a condition that a prior verification of the facts should be done.

But it would suffice if the media or the press has acted after a reasonable verification.

But, at the same time, it should not be forgotten that the Apex Court in the case reported in (1994) 6 SCC 632 had made it clear that every citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters and no one can publish anything in reference to the above matters without his or her consent whether laudatory or critical.

(emphasis supplied) 16. In the case on hand, the following features are noticed by the Court.

Admittedly, the appellant is a Cabinet Minister of the Union Government.

The documents placed by the appellants would clearly indicate that the respondents were constantly publishing the photographs of the Minister with write-ups on different dates as mentioned above in the front cover page of their magazine.

No doubt, the respondents had justification in levelling comments and criticisms as it would fall under the Freedom of Speech so long it is connected to or concerning with his official position as a Union Minister.

But the instances are noticed which did not relate to his public life.

The respondents have published the family photograph of the appellants.

That apart, there was no necessity for publishing the photograph of the minor child.

The UN Convention on the rights of the child 1989 has clearly adumbrated the rights of the child namely the right to preserve the identity, nationality and the family relations.

The respondents had no explanation to offer why and under what circumstances, they published the photograph of the minor child.

It is recorded in the impugned order that they gave an oral undertaking not to publish the photograph of the child in future.

But, it is a matter of surprise to note that even without a written undertaking, the trial Court has closed the application in that regard.

No doubt, it is an act of infringement of the right of the child by exposing the identity and the family relationship of the fiRs.appellant and thus, inserting the photograph cannot but be termed as an abuse.

17.The respondents have published the photograph of the second appellant, who is the wife of the fiRs.appellant.

Apart from that, the news items published by the respondents would disclose the allegations made against her.

It is not the case of the respondents that she is a public figure or she is in a public domain, and hence it has got to be termed that the publications made against the second appellant were infringement of her right to privacy which is guaranteed by the Constitution in her favour.

18.A scrutiny of the magazines would also indicate that there were instances in which the privacy of the fiRs.appellant was also invaded.

For example two photographs of the Hon'ble Chief Minister and the fiRs.appellant were printed in the front cover page of the magazine dated 24.12.2008.

A comparison of both the photographs and in particular, the second one, would no doubt seriously damage the image of the fiRs.appellant in the minds of the readers of the magazine.

At no stretc.of imagination, the respondents can be allowed to say that it was connected to or concerning with his public life.

It is not the case of the respondents anywhere in the couRs.of the entire counter that they made any verification with the appellants before making such publications.

19. When a citizen contests in an election and is voted to power and he enjoys the position in view of the confidence originally reposed on him by the people, he becomes more accountable to them.

Higher the post and position more should be the degree of accountability.

In a democratic society like ours, the accountability and transparency have a vital role to play.

When a person is elected and reaches a high position and when he satisfies the test of accountability and transparency, naturally the confidence reposed on him by public would all the more increase than what was reposed on him before his coming to the position.

Hence the contention put forth by the learned Senior Counsel for the appellants that in view of the official position of the respondents as a Union Cabinet Minister, he is in a better position than a common citizen and hence the respondents should not give him the equal treatment cannot be countenanced.

20. Equally the contention put forth by the learned Senior Counsel for the respondents that they enjoy freedom of press and hence they could publish anything and everything cannot be countenanced.

The respondents cannot be allowed to take shelter under the Doctrine of Freedom of Press, and the same cannot also be extended to publishing exclusively private affairs of the appellants calling it as connected to or concerned with public life.

21. It is a matter of surprise to note that the learned Single Judge has awarded exemplary costs of Rs.10000/- while dismissing the application.

It is a case where the appellants as plaintiffs have sought for damage of Rs.1 crore and Rs.25 lakhs respectively alleging that their dignity was impaired by the defamatory news articles made in the respondents' magazine.

What was before the learned Single Judge for consideration was whether to grant the ad-interim injunction as asked for.

The merits or otherwise of the contentions were to be decided on appreciation of evidence at the time of trial.

Hence whether to award exemplary costs at the time of the dismissal of the application for interim injunction would not arise.

For filing a suit, a person who approaches the Court need not actually have a right, but suffice to say, he bonafide believes that he has got a right.

At the time of initiation of the proceedings, the plaintiffs who feel aggrieved, are entitled to ventilate their grievance at the initial stage and seek for an interim injunction to restrain a continuing injury.

Apart from that, it should not be forgotten that at the time of initiation of the suit, ad-interim injunction was granted since in the opinion of the learned Single Judge there was a prima facie case to grant so, and the said ad-interim injunction continued to be in force till the disposal of the main application.

In the circumstances of the case, awarding costs of Rs.10000/- to the fiRs.appellant was thoroughly unwarranted and unjustified.

Hence without any hesitation that part of the order has got to be set aside.

22.In view of the discussions made above, this Court is of the considered opinion that the order of the learned Single Judge has got to be set aside and the appellants have made out a prima facie case to get an order of interim injunction to the extent as indicated below.

Hence the order of the learned Single Judge including the exemplary costs is set aside.

Interim injunction is granted as follows: (a) The respondents 1 to 3 are restrained from in any way printing, publishing and circulating the defamatory news items and the photographs of the second appellant or publishing any caricature or fudged photographs of the second appellant and the minor daughter, except by getting clarification from the second appellant.

(b) The respondents 1 to 3 are also restrained from in any way printing, publishing and circulating the defamatory news items or publishing any caricature or fudged photograph of the fiRs.appellant in respect of or connected to his private life causing damage to the reputation except by getting clarification from the fiRs.appellant.

23.In other respects, O.A.No.420 of 2009 is dismissed.

Both these original side appeals are, accordingly, disposed of.

No costs.

Consequently, connected MPs are closed.

Untrammled by the observations made above, the trial Court has to decide the suit on merits and in accordance with law.

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