

Petitioner Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/933872

Court : Chennai

Decided On : Sep-14-2012

Judge : K. Chandru

Appeal No. : Original Application No. 276 of 2012 in C.S. No. 231 of 2012

Appellant : Petitioner

Respondent : Respondent

Advocate for Pet/Ap. : For the Appearing Parties: -----.

Judgement :

K. Chandru, J.

1. This application is filed by the applicants seeking for an interim injunction restraining the defendants in any way making or publishing any further false, intimidatory and defamatory allegations against the plaintiffs.

2. The suit is for a claim of damages of Rs.50 lakhs together with interest at the rate of 18% per annum and for a permanent injunction restraining the defendants from making or publishing any further false, intimidator or defamatory allegations against the plaintiffs. Pending the suit, this application came to be filed. In that application, on 20.04.2012 this court found that the respondents have not filed any counter. This court had recorded the oral statement of the counsel for the respondents that till 24.4.2012, the respondents will not publish the news item.

Subsequently, the said order was extended till 11.6.2012. On notice, a counter affidavit, dated 24.4.2012 has been filed by the respondents. The applicants have filed a reply affidavit, dated 24.4.2012.

3. Heard both sides. The case of the applicants was that they are registered money lenders and financiers. They are indulging in various commercial activities. The applicants had disbursed to a tune of more than Rs.10 crores to about 30 persons. It is their family business. Several persons whose names were furnished in paragraph 4 of the affidavit had borrowed money. There are various litigations and court proceedings pending before the Magistrate Courts and the High Court. Those borrowers had resorted to "Katta Panchayat" and exerted influence to cancel the loans obtained by them. But, however the respondents are repeatedly publishing news items tarnishing the applicants' image. They are also writing that the subordinates of the police department are not acting as they had received bribe from the applicants. The news items published by the respondents were set out in the application. If the applicants are charging exorbitant interest, there is scope for legal redressal in terms of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. But the respondents are continuing to malign the reputation of the applicants with false and defamatory publication. Hence the applicants have claimed damages and also to prevent future publication, an injunction was sought for.

4. In the counter affidavit filed by the respondents, it was stated that the application was filed against the news item published in the news paper on 13.07.2011, 29.03.2012 and 31.03.2012. Being the newspaper, they are entitled to publish matters which are concerning public interest. They are protected under Article 19(1)(a) of the Constitution. The applicants' prayer if ordered, it will amount to blanket gagging of press. The applicants have also suppressed an information that on a complaint given by one A.S.Sikandar Basha, the first applicant was arrested. There are many complaints pending in various police stations against the applicants. It was further stated that it is the usual practice of the print media to publish the news item along with the photograph if the photograph of the news item is available. The news items published in their newspaper were about the lapse of police and political persons in not arresting or taking any action against

the applicants. Hence the press is entitled to complaint about the conduct of the police. No part of the news item was false. The news item that were published were based upon the contents in the FIR registered by the police for public good and without malice. The allegation that by publication, there was defamation against the applicants was also denied. Apart from the persons who had borrowed money and whose names were revealed in the application, there are several others who had also borrowed money and there are numerous complaints against the applicants. The blanket order of injunction will cripple the right of the paper in bringing the news which is in public interest.

5. In this context, it is necessary to refer to certain decisions of the Supreme Court and of this court, which may have bearing on the relief claimed by the applicants.

6. Speaking about the freedom of the press, the Supreme Court vide its judgment in *Odyssey Communications Pvt. Ltd. Vs. Lokvidayan Sanghatana and others* reported in (1988) 3 SCC 410 has observed in para 6 "Freedom of expression is a preferred right which is always very zealously guarded by this Court."

7. While reiterating the same principle, the Supreme Court in its judgment in *S.Rangarajan Vs. P.Jagjivan Ram and others* reported in (1989) 2 SCC 574 has held as follows:

"45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg"."

8. The Supreme Court vide its judgment in *Indian Express Newspapers (Bombay) Private Ltd. and others Vs. Union of India and others* reported in (1985) 1 SCC 641 had laid down the primary duty of the Courts is to invalidate all laws and administrative actions which interferes with press freedom, thereby interfering with constitutional freedoms. The following passage found in para 32 in the judgment may be extracted below:-

"32. In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years, Governments in different parts of the world have used diverse methods to keep press under control. They have followed carrot-and-stick methods. Secret payments of money, open monetary grants and subventions, grants of lands, postal concessions, Government advertisements, conferment of titles on editors and proprietors of newspapers, inclusion of press barons in cabinet and inner political councils etc. constitute one method of influencing the press. The other kind of pressure is one of using force against the press. Enactment of laws providing for pre-censorship, seizures, interference with the transit of newspapers and demanding security deposit, imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area that can be devoted for advertisements, withholding of Government advertisements, increase of postal rates, imposition of taxes on newsprint, canalisation of import of newsprint with the object of making it unjustly costlier etc. are some of the ways in which Governments have tried to interfere with freedom of press. It is with a view

to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it. It is, therefore, the primary duty of all the national courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it, contrary to the constitutional mandate."

9. While going through a news item, the courts have emphasized the culture of "responsible reading". The Supreme Court vide its judgment in *Ajay Goswami Vs. Union of India and others* reported in (2007) 1 SCC 143 had dealt with such an issue and the passages found in paras 78 and 79 may be extracted below:-

"78. Be that as it may, the respondents are leading newspapers in India and they have to respect the freedom of speech and expression as is guaranteed by our Constitution and in fact reaches out to its readers any responsible and decent manner. In our view, any steps to ban publishing of certain news pieces or pictures would fetter the independence of free press which is one of the hallmarks of our democratic set-up. In our opinion, the submissions and the propositions of law made by the respective counsel for the respondents clearly established that the present petition is liable to be dismissed as the petitioner has failed to establish the need and requirement to curtail the freedom of speech and expression. ...

79. We are also of the view that a culture of "responsible reading" should be inculcated among the readers of any news article. No news item should be viewed or read in isolation. It is necessary that a publication must be judged as a whole and news items, advertisements or passages should not be read without the accompanying message that is purported to be conveyed to the public. Also the members of the public and readers should not look for meanings in a picture or written article, which are not conceived to be conveyed through the picture or the news item."

10. The applicants have filed the suit for a lump sum amount for damages towards defamation. The same will have to be decided during trial in the suit. The applicants will have to make out a very strong case for the grant of a restraint order on the news paper. The respondents have denied any reckless publication

and have stated that it is based upon information available and that public interest requires publication. This court do not find that any motivated publication has been made by the respondents which warrants reasonable apprehension to be followed by a restraint order against the respondents. Hence the application will stand dismissed. No costs.

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