

IN THE HIGH Court OF JUDICATURE AT MADRAS

Dated: 12.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4033 of 2012
and
M.P.No.1 of 2012**

1.Nakkheeran Publications
and its Editor,
Nakkheeran Publications,
No.105, Jani Jahan Khan Road,
Royapettah, Chennai – 600 014.

2.Nakkheeran Gopal,
Editor, Nakkheeran Publications,
No.105, Jani Jahan Khan Road,
Royapettah, Chennai – 600 014.

.. Petitioners

Vs.

The 292nd Guru Maha Sannidhanam,
Sri La Sri Arunagirinatha,
Sri Gnanasambanda Desiga Paramachariya Swamigal,
representing Thirugnanasambanda Swamigal Aadheenam,
70, South Avani Moola Veedhi,
Madurai – 1

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike down the plaint in O.S.No.2820 of 2012, on the file of V Assistant City Civil Court, Chennai.

For Petitioners : Mr.P.T.Perumal

For Respondent : Mr.S.Suriyaprakash

ORDER

The petitioners have filed this Civil Revision Petition to strike down the Plaint in O.S.No.2820 of 2012 on the file of the learned Vth Assistant City Civil Court, Chennai.

2.The instant Civil Revision Petition is filed seeking to invoke the supervisory power conferred to this Court under Article 227 of the Constitution of India to strike down the suit filed by the respondent herein against the revision petitioners in O.S.No.2820 of 2012 before the learned Vth Assistant City Civil Court, Chennai. The above suit was filed by Madurai Aadheenam against the publishers of "NAKKEERAN" a political magazine. The gist of the case would runs as follows.

3. According to the plaintiff, Madurai Aadheenam was founded by Saint. Thirugnana Sambandhar some 1500 years back. Now, Madurai City is the Head Quarts for the Madurai Aadheenam and it is having properties worth about more than Rs.20,000 Crores. Sri. Arunagirinadhar is the present head of Madurai Aadheenam, the Saiva Vellalas are the supporters and contributors to the Madurai Aadheenam. Till 1945, the sacred Madurai Mennakshi Sundareswar Temple and Rameshwaram Ramanathasamy Temple were under the control, management and administration of the above said Aadhineem. Thereafter, the said temples were taken over by the Government of Tamil Nadu. At present "Guru Maha Sanidhanam Sri La Sri Arunanagirinadhar Swamigal" is the pontiff of Madurai Aadheenam and he inherits great responsibility in carrying forward the traditions of Thiruganasambandar's sacred work. The plaintiff ascended the above said position in 1980 at the age of 35 and he is the 292nd Guru Maha Sannidhanam, succeeding Sri La Sri Somasundara Desika Paramachariya Swamigal.

4. According to the plaintiff, while the facts are being so, to his shock and surprise on 29.04.2012 the defendants had published in

their Magazine, a bi-weekly namely Nakkeeran in Volume 25 No.4 dated April 28 – May 01 report at page No.40 containing intimidating, demoralizing, defaming, insulting, scandalous, false and fabricated imputations against the plaintiff. The defendants had published the above said Malicious Article and pictures without any basis, alleging that the plaintiff is indulging in unlawful, unethical and unspiritual activities. Further the defendants knowingly published the above said article with a view to defame the name of the plaintiff in the general public and its followers with an oblique motive.

5.It is further contended by the plaintiff that the above said articles are baseless and have been printed with a sole aim to tarnish the image of the plaintiff. Because of the above said scandalous publication, the plaintiff has suffered a huge incalculable loss and mental agony. The 1st defendant is a registered bi-weekly publication and the 2nd defendant is its editor. Hence they are bound by statutory rules, norms and the guidelines issued by the Press Council of India. But, in order to increase their circulation and sale, the defendants have indulged in publication of speculative unverified news items in their magazine and thereby they have violated the above norms and guidelines. Therefore, the plaintiff has filed the above said civil suit

against the defendants/revision petitioners for permanent injunction, restraining the defendants, their men, agents, servants, representatives or anybody acting on their behalf in any manner publishing any material, articles, photographs, in their magazines, websites whatsoever on future either by direct or indirect reference against the plaintiff or Madurai Aadheenam, either personally or individually or in the capacity as the Head of the Aadheenam in their magazine "Nakeeran" a bi-weekly.

6. On receipt of summons in the above suit, the defendants have approached this Court by way of this revision petition to strike off the plaint on the ground that all the citizens have a right to protect their reputation. If there is any controversial news about any one on public interest, which are to be published for the knowledge of the public, the newspaper has a right to publish that news, based on the enquiry and views and statements made by the other citizens connected with the issue. In case, there was any falsity in the news which was published with malice and for ulterior purposes, then the aggrieved person can establish before the Court that the impugned publication was defamatory against him and thereafter he can seek permanent injunction not to repeat the publication in future. In the legal parlance

of Press Freedom as established by the catena of decisions, this is the only civil right available to the private citizens. But, under misconception of law, the plaintiff has sought for blanket prayer wide covering injunction against the newspaper, in a ganging manner on speculative basis, which is unknown to civil jurisprudence. The prayer in the above suit is unheard and not tenable in the eye of law.

7.The other ground raised by the revision petitioners to strike down the plaint filed by the respondent herein that the public has right to know and the newspaper have a duty to inform. This is one of the essential characteristics of Press Freedom and also the unshakable foundation of media functioning in the present case on hand. The activities of Madurai Aadheenam are public activities at the large public, particularly the followers of the Aadheenam, who have a right to know completely about the functions and administrations of Aadheenam in a transparent manner. So, the impugned publication by "Nakkiran" is only on the basis of the above stated cardinal principle of press freedom. Hence, the plaintiff has no legal injury or grievance and cause of action against the defendants to file the above suit. Hence, the defendants prayed to strike down the above suit, as it is a clear case of abuse of process of law and without any cause of action in the

strict sense of law.

8.I heard Mr.P.T.Perumal, learned counsel appearing for the petitioners and Mr.S.Suryaprakash, learned counsel appearing for the respondent and the entire available material records are perused.

9.The learned counsel for the Revision Petitioners vehemently contended that the suit filed by the respondent herein is not maintainable in law and there is no cause of action for the Plaintiff/Respondent herein to file the above suit for the relief of Permanent Injunction against the Defendants' publication. The bare reading of the plaint itself goes to show that the article published by the defendant magazine namely Nakkiran on 29.04.2012, according to the plaintiff is intimidating, scandalous and false one, but there is no cause of action to file the said suit. Therefore, the plaintiff sought for the relief of Permanent Injunction against the defendants, their men, agents, servants, representatives or anybody acting on their behalf in any manner publishing any material records, photographs in their magazines, websites, whatsoever in future either directly or indirectly against the plaintiff and Madurai Atheenam either personally or individually or in the capacity as the head of the Atheenam in their

magazine "Nakkiran" a bi-weekly. The above said prayer itself is not at all sustainable under law. If the plaintiff is allegedly affected by the article published in the 1st defendant's magazine namely "Nakkiran", the plaintiff should have sought for the relief of declaration first and should have filed a suit against the respondent for damages secondly as if the article contends defamatory imputations against the plaintiff, then only the plaintiff could seek the relief of permanent injunction that too with a specific prayer not to publish the very same article in future.

10. The bare injunction blanket prayer is violative of the freedom of press enshrined in Article 19 (1) (a) of the Constitution of India. It is a settled principle of law that Pre-censorship of publication is not possible when no obscene article is published. Hence, the present suit with the above prayer is an abuse of process of law. Therefore, on that ground itself, the plaint can be struck off by this Court having power conferred under Article 227 of the Constitution of India. The further contention of the learned counsel for the petitioner is that no person is entitled to restrict the journalistic right of the magazine against any future publication.

11.The learned counsel for the Civil Revision Petitioner would submit that the plaintiff is making a special prayer to lay down a pre-condition to file a civil defamation suit based on Section 9 of Defamation Act, 1996. Under Section 9 of Defamation Act, the aggrieved party can pray for the summary relief of declaration that the statement was false and defamatory upon the plaintiff, then he could seek for damages and permanent injunction restraining the defendant from further publishing the matter complained of.

12.It is contended by the petitioners that without getting the declaratory relief, the civil suit for defamation is not maintainable. In criminal law the defamation is well codified under Section 499 of IPC. It is the further contention that the plaintiff has not averred in the body of the plaint any of the person's names in whose presence the plaintiff's reputation was spoiled. Admittedly the plaintiff has not stated about any of the names in the body of the plaint under whose presence the plaintiff's reputation was affected. Unless, such averments are mentioned in the body of the plaint, the concept of loss of reputation cannot be proved in the manner known to law.

13.The learned counsel for the petitioners would draw the

attention of this Hon'ble Court to the doctrine of reputation which is well clarified by the Judgment of the Hon'ble Gujarat High Court in the case of **Naottamdas L.Shah v. Patel Magabhai Revabhai and another** reported in **1984 Crl. L.J. 1790**.

14.The other contention of the learned counsel for revision petitioner is that the newspaper has a right to inform about the public activists or public figures and would provide comprehensive objective information in respect of affairs of the countries including, political, social, economic and cultural life. Regarding the above submission, the learned counsel would draw the attention of this Court to a judgment reported in **2002 (5) SCC 294** in the case of **PUCL v. Union of India**, wherein it is held that the newspaper has the right to inform about the antecedents including past life of the candidates in general election. The press should have the right to present anything which it thinks fit for publication. The same principle has been confirmed in the Judgment of Harijai Singh case reported **1996 (6) SCC 466** wherein it is stated that "The, freedom of press is regarded as "the mother of all other liberties" in a democratic society. The: Primary function, therefore, of the press is for providing comprehensive and objective information on all aspects of the country's political, social, economic

and cultural life. It has an educative and mobilizing role to play. It plays an important role in molding public opinion and can be an instrument of social change. It therefore, turns out that the press should have the right to present anything which it thinks fit for publication for the larger interest”.

15.As for as the maintainability of this C.R.P. is concerned, the learned counsel for the revision petitioners would submit that this Civil Revision Petition is maintainable in view of the judgment of this Court in the case of ***Southern and Rajamani Transport Private Limited, rep. by its Director, V.R.Venkataswamy, No.270, Goods Shed Road, Madurai-625 001 and 33 others v. 1.R.Srinivasan and others*** reported in **2010 (4) CTC 690**. In the above said judgment, it is held that alternative remedy available under CPC is not a bar to invoke the jurisdiction under Article 227 of the Constitution of India. This Hon'ble Court held that if the defendant aggrieved the following, he has right to invoke Article 227 of the Constitution of India. a) to prevent abuse of process of law b) to prevent miscarriage of justice, c) to prevent grave injustice and d) to establish administration as well as judicial power of High Court. Therefore by relying upon the above judgment the learned counsel for revision petitioners submitted that

the present Civil Revision Petition is maintainable in law when the suit filed by the plaintiff/respondent herein is a clear case of abuse of process of law and this Court is having power to prevent the miscarriage of justice by striking off the plaint as the filing of the plaint would ultimately would not serve any purpose as per law.

16. In **1984 Crl. L.J. 1790** the Hon'ble Gujarat High Court in the case of **Naottamdas L. Shah v. Patel Magabhai Revabhai and another**, it is held that "The term 'reputation' means, 'what is generally said or believed about the persons or things' character". The two terms "character" and "reputation" are prone to be confused. Character, in the context, would mean fortitude or moral constitution or strength of a person. It has no relevance with the belief or opinion of others in respect to a person. Therefore, character is what a person "actually is", while "reputation" is what neighbors and others say "what he is". The man may have, in fact, a good character and yet suffer from bad reputation or vice versa. In short, 'reputation' is, what is reputed about, that is to say, common knowledge or general opinion in respect to a person. It is the estimation in which a person is hold by others and not the opinion which he himself may have about himself. It may be said that 'reputation' is a composite hearsay, being the

community's opinion which implies the definite and final formation of belief by the community. By no stretch of reasoning the term 'reputation' can imply ones own belief about himself"

17. In yet another case reported in **1988 (4) SCC 592** in the case of **Reliance Petrochemicals v. Proprietors of Indian Express News Papers, Bombay Private Ltd. & Others**, it is held that "The people at large have a right to know in order to be able to take part in participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of the Constitution of India. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take up the responsibility to inform."

18. In one another case of **W. Hay and others v. Aswini Kumar Samanta** reported in **A.I.R 1958 Calcutta 269**, it is held that "Where again the offending words would be defamatory only in the particular content in which they were used, offered or published, it is necessary also to set out, except whereas in England, the law is or has been made expressly otherwise the offending context (colloquium) in

the plaint and to state or over further that this context or the circumstances. Constituting the same, were unknown to the person to whom the words were published, or attend that they understood the words in the defamatory sage. In the absence of these necessary averments the plaint is liable to be rejected”.

19.The learned counsel for the revision petitioners also relied on the following decisions to support his case i.e., **2002 (5) SCC 294 & 1994 (6) SCC 632 R.Rajagopal case**. The above said judgments also dealt with the right to freedom of speech and freedom of press as enshrined under our Constitution of India.

20.Per contra, the learned counsel for the respondent herein would strenuously contended that the publication of Article by the revision petitioners against the plaintiff has damaged the image of the plaintiff in the general public and its followers. Thereby the magazine of the defendants violated the guidelines and rules prescribed by the Press Council of India. The defendants have legal and moral responsibility to maintain standard integrity and social conscious while publishing an article involving spiritual, personal and social implication against an individual, organization or an establishment. Further the

revision petitioners without exhausting the remedy available to them under Order 7 Rule 11 CPC to reject the plaint, has straight away filed the present C.R.P by invoking Article 227 of the Constitution of India is not maintainable in law. In support of his contention the learned counsel for the respondent relied on a judgment reported in A.I.R.1961 Andhra Pradesh 190 (Vol.48, C.50) (1) wherein it is held that Freedom of speech and expression in Art. 19(1)(a) cannot be taken to mean absolute freedom to say or write whatever a person chooses recklessly and without regard to any person's honour and reputation. Indeed, the right has its own natural limitation. Article 19(2) in this behalf contains safeguard of reasonable restrictions on the exercise of the right.

21.The other judgment relied on by the respondent which is reported in **1994 (6) SCC 632** in the case of ***R.Rajagopal Alias R.R.Gopal and another v. State of T.N. And Others***, wherein it is held that Right of Privacy vis-a-vis freedom of press. As per the judgment, the proper balancing between the two necessary remedies available in cases of infringement of right of privacy is the publication of any matter concerning privacy of citizen out of his family, marriage, education etc. without his/her consent could entitle him/her to

damages expect where the publication is based on public regards including Court records, provided it does not pertain any several victim of sexual assault, kidnapping, abduction.

22.This Court has carefully perused the impugned publication published by the revision petitioners and the same was only the reproduction of the statements given by one Mr.Solaikannan and Advocate Mr.Saravanan. In fact, the revision petitioners have published the photos of the above said persons in the impugned article. But the plaintiff/respondent herein has not impleaded them as defendants in the above suit or made any complaint against them.

23.As rightly pointed out by the revision petitioners, the article published in their magazine cannot be stated as tarnishing the image of the plaintiff, Madurai Adheenam. At this juncture, as per defamation is concern this Court could resort the definitions as provided under section 499 of I.P.C wherein it is held that:

Explanation 1. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

24. So the perusal of the above said explanation, this Court now comes to the averments made in the plaint. Further the prayer sought for in the plaint is not to publish any such publication in future. Whereas in the strict sense of law, the plaint must be constructed for the relief of declaration that such article is defamatory as per law. When no such relief of declaration is sought for, no Court can presume that straight away the article published is defamatory, then it would be a pre-determination and pre-conception of the said issue. No Court can

be a party of the pre-determination of the issue raised before the Court. So in the considered opinion of this Court, no such plaint can file unless the relief of declaration of the impugned publication is defamatory.

25. Further the perusal of the entire publication, for which the plaint has filed, would not satisfy the legal parlance as contemplated under definition as contemplated under Section 499 of Indian Penal Code. Further in the considered opinion of this Court, the defendants are having right to freedom of press as enshrined in Article 19 (1) (a) of the Constitution of India. As discussed above, the plaintiff cannot seek for a relief of 'blanket injunction' by making omnibus prayer. Therefore, the above suit filed by the respondent herein is a clear case of abuse of process of law and the same cannot be allowed to stand.

26. At the same time, it is to be recorded here that the maintainability of civil revision petition without exhausting the remedy available under Order 7, Rule 11 C.P.C. However, the perusal of the said provision would show that it is the only remedy to avail such a relief. When there is no express bar is provided in the code, then the filing of the instant C.R.P. under Article 227 is very well maintainable.

Further, the power conferred upon this Court under Article 227 is very wide with the object to secure the interest of justice which is more than the follow of law. So, the prime object in dealing with each and every matter to secure the interest of justice. Apart from that this Court is having power of superintence under Article 227 to supervise and to look out the affairs and judicial function of the subordinate Courts. This unfettered power in this regard is squarely covered under Article 227 of the Constitution of India. So this Court has no hesitation to hold the instant C.R. P under Article 227 is very well maintainable and the points raised in this regard as the C.R.P is not maintainable is summarily rejected.

27.If at all the plaintiff can only pray for a permanent injunction restraining the defendant from republishing or repeating the impugned publication, no person has a right to seek a blanket injunction against the newspaper with uncertainty.

28.In view of the above discussions and in the light of the judgments referred above, I am of the considered opinion that the suit for permanent injunction filed by the plaintiff/respondent is liable to be struck down from its file.

29.In the result, the civil revision petition is allowed and the plaint filed in O.S.No.2820 of 2012 on the file of the Vth Assistant City Civil Court, Chennai is hereby struck down. Considering the facts and circumstances of the case, there is no order as to cost. Consequently, connected miscellaneous petition is closed.

12.09.2017

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Speaking Order

vs

To

The V Assistant City Civil Court, Chennai.



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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(PD)No.4033 of 2012
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