

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 23.03.2018
ORDER PRONOUNCED ON:16.05.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Original Application No.871 of 2014
and Application No.6297 of 2015
in CS No.705 of 2014

O.A.No.871 of 2014

Ms.Kanimozhi Karunanidhi
D/o. Mr.M.Karunanidhi,
14, 1st Main Road, CIT Colony,
Mylapore, Chennai 600 004.

.... Applicant

Versus

1. Thiru.P.Varadarajan
Director & Publisher,
Kumudam Group Magazines,
Kumudam Publications Pvt Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010.
2. Thiru S.Kosal Ram,
Group Editor,
"Kumudam Reporter",
Kumudam Publication (P) Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010.
3. Kumudam Publication (P) Ltd.,
Rep by its Managing Director,
Kumudam Group Magazines,
No.306, Purasawalkam High Road,
Chennai 600 010.
4. Thiru.K.Gubendran, Joint Editor,

“Kumudam Reporter”,
Kumudam Publication (P) Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010.

5. Thiru. John Wilkins, News Editor,
“Kumudam Reporter”,
Kumudam Publication (P) Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010.

6. Thiru. S.Subramanian,
Assistant Editor,
“Kumudam Reporter”,
Kumudam Publication (P) Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010.

7. Thiru. G.Ramesh,
Assistant Editor,
“Kumudam Reporter”,
Kumudam Publication (P) Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010.

... Respondents

(Respondents 3 to 7 impleaded as per order dated 22.09.2016 in Application Nos. 875 and 876 of 2015)

PRAYER: This Original Application has been filed seeking an order of ad interim injunction restraining the respondents/defendants, their men, agents, staff, subordinates or any person claiming through or on behalf of them in any way printing, publishing and circulating the defamatory article, sketch/photograph/caricature/fudging or any pictorial representation of the Applicant/Plaintiff in their magazine “Kumudam Reporter” or in any manner causing damage to the reputation of the Applicant/Plaintiff without seeking prior clarification from the applicant/plaintiff.

For Applicant : Mr.P.Wilson, Senior Counsel
for M/s.P.Wilson Associates

For Respondents : Mr.Satish Parasaran, Senior Counsel
for Mr.R.Parthasarathy and
Mr. Rahul Balaji

A.No.6297 of 2015

Thiru.P.Varadarajan
Director & Publisher,
Kumudam Group Magazines,
Kumudam Publications Pvt Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010. Applicant

Versus

1. Ms.Kanimozhi Karunanidhi
D/o. Mr.M.Karunanidhi,
14, 1st Main Road, CIT Colony,
Mylapore, Chennai 600 004.
2. Thiru S.Kosal Ram,
Group Editor,
"Kumudam Reporter",
Kumudam Publication (P) Ltd.,
No.306, Purasawalkam High Road,
Chennai 600 010. ... Respondents

PRAYER: This Application has been filed seeking to vacate the injunction
granted in O.A.No.871 of 2014, vide order dated 05.11.2014.

For Applicant : Mr.Satish Parasaran, Senior Counsel
for Mr.R.Parthasarathy and
Mr. Rahul Balaji

For 1st Respondent : Mr.P.Wilson, Senior Counsel
for M/s.P.Wilson Associates

ORDER

Original Application No.871 of 2014 has been filed by the plaintiff in CS No.705 of 2014 seeking an order of ad interim injunction restraining the respondents/defendants, their men, agents, staff, subordinates or any person claiming through or on behalf of them in any way printing, publishing and circulating the defamatory article, sketch/photograph/caricature/fudging or any pictorial representation of the Applicant/plaintiff in their magazine "Kumudam Reporter" or in any manner causing damage to the reputation of the Applicant/Plaintiff without seeking prior clarification from the applicant/plaintiff.

2. The suit in CS No.705 of 2014 has been filed by the applicant/plaintiff seeking damages for a sum of Rs.1,00,00,000/- from the defendant, therein for the alleged defamation/loss of reputation caused by the defendants by their conduct in publishing various incriminating articles about the plaintiff and her family members and for a permanent injunction restraining the defendants from in any manner publishing and circulating the defamatory article, sketch/photograph/caricature/fudging or any pictorial representation of the plaintiff in their magazine "Kumudam Reporter" or in

any manner causing damage to the reputation of the Plaintiff without seeking prior clarification from the plaintiff.

3. According to the applicant/plaintiff, she is the daughter of former Chief Minister of Tamil Nadu and she is a duly elected Member of the Parliament in the Rajya Sabha for two consecutive terms. She had contributed to several Parliamentary Committees during her seven years as a Member of the Upper House of the Parliament. She is also a prominent leader of the Dravida Munnetra Kazhagam, a major political party in the State of Tamil Nadu. She is also a vibrant social worker and in view of her tireless effort, she has earned a reputation as the prominent political leader. Applicant/Plaintiff would also claim that she is an author recognized in the literacy circles for her various works in Tamil Literature. Many of her works have been translated into English and several other languages. In short, the plaintiff would claim that she is a prominent and respected political leader in the State.

4. It is claimed that the respondents, who are associated with the Tamil bi-weekly magazine called "Kumudam Reporter" in various capacities like Director and Publisher, Group Editor, Joint Editor, News Editor, Assistant Editor, etc. have with a malicious intention of damaging her

reputation are habitually engaging themselves in publication of highly defamatory and baseless News articles against the applicant as well as the other leaders belonging to the political party, to which the applicant is also attached. The applicant/plaintiff would further complain that in the issue of the “Kumudam Reporter” magazine dated 31.07.2014, the defendants had printed and published a malicious and mischievous article with a sub title “ஸ்டாலினை சிக்க வைக்க கனிமொழி சதி? டெல்லியில் நடந்த பகீர் சந்திப்பு”. The said article was published under the style of a conversation between a fictitious character called Swami Vambaanandha and his disciple. Contending that the contents of the article which reads as if it is a fiction, are concocted, fanciful, mischievous, derogatory and defamatory apart from being a bundle of lies, the applicant/plaintiff would claim that the publication of the article is only to project the plaintiff and the political party to which she is attached, viz., the Dravida Munnetra Kazhagam, in bad light in the eyes of the public and to impute certain motives to the applicant/plaintiff, which according to her are baseless and false. It is claimed by the applicant/plaintiff that the article has been published only with a malicious intention to defame the plaintiff.

5. The applicant/plaintiff would further contend that in the second part of the article the respondents have claimed that the applicant is actively

planting news items in various Media, against her own brother Thiru.M.K.Stalin, who is working President of the Dravid Munnetra Kazhagam Party. He is also a popular leader, who had held several positions including the Deputy Chief Minister of the State in the past. It is also the contention of the applicant/plaintiff that the claims made in the article are entirely false and baseless apart from being with malicious intention. The applicant would also claim that the respondents are continuously publishing various articles designed to damage the reputation of the applicant/plaintiff and her family members in almost each issue of their magazine. According to the applicant, the articles even touch upon the private life of the applicant/plaintiff. Claiming that publication of such articles, which are very suggestive and *per se* defamatory would amount to intrusion into her privacy, which will be in violation of a Constitutional Right guaranteed to her, the applicant would seek an order of an injunction restraining the respondents in publishing any article, which is so designed to malign her reputation as a political leader.

6. The applicant/plaintiff would also refer to the reply dated 07.10.2014, sent by the respondents to her legal notice dated 01.08.2014 and contend that a bare reading of the reply shows that the respondents are bent upon continuing their illegal actions and would not stop their tirade

against the applicant and her family. It is also claimed by the applicant/plaintiff, that the actions of the respondents border on immorality and impropriety and lack decency and probity, which is required of ethical journalism. On the above contentions, the applicant/plaintiff would seek an order of injunction as stated above, restraining the respondents from publishing and circulating any defamatory articles against the applicant.

7. Originally this Court had granted an order of interim injunction on 05.01.2014, and the same was modified by an order dated 25.04.2016. The 1st respondent has come out with an application in Application No.6297 of 2015, seeking to vacate the injunction granted in OA No.871 of 2014. In the counter affidavit supporting the application for vacating the injunction, the 1st respondent would contend as follows:

The blanket order of injunction denies them the Right to Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India. It is claimed by the respondents, that the applicant being a political leader and a public figure, it is in public interest that news items regarding her political activities are published by the media. It is also claimed that the freedom of expression guaranteed under Article 19 (1) (a) of the Constitution of India, being a superior right has to be jealously guarded by the Court. It is also contended that any reasonable restriction on

such right could be made only by rules or regulations, which have the statutory backing.

8. The respondents would also claim that there cannot be a gag order in the guise of an injunction. It is also pointed out in the counter affidavit that while it is settled law that an injunction can be granted against publication of any news article, it can be done only when there exists an imminent threat to the personal rights to the applicant/plaintiff. In the absence of such threat, there cannot be a gag order on the press from publishing articles about any person, more so as in the case on hand, the applicant/plaintiff, is a popular politician and having the support of considerable population of the State. According to the respondent, the people are entitled to know of the activities of the politician and it is in public interest that the people should be kept informed about the activities of persons like the applicant/plaintiff. It is also contended that very many articles, about the applicant, her brother and her father are published in various magazines and news papers and it is not open to the applicant to target only the respondents' publications and seek a gag order or an order of injunction restraining them from such publication.

9. The counter affidavit also goes on to elaborate as to what is meant by privacy and the nature of protection that is guaranteed against publication

of a person's personal life. It is also claimed that the impugned publication is a journalistic article and the same has been published after taking all reasonable steps to ensure the veracity of the facts. It is also claimed that the publication is not inspired by any malice or personal animosity towards the applicant/plaintiff. It is also claimed by the respondents that as a responsible member of the nation's free press they have a duty to convey news to the general public, which is in public importance and helps to create a more informed electorate. On the above contentions, the 1st respondent would seek vacation of the interim injunction granted in OA No.871 of 2014.

10. The other respondents have adopted the counter affidavit filed by the 1st respondent in OA No.871 of 2014.

11. The 4th respondent has filed a separate counter affidavit. In the said counter affidavit it is claimed that the applicant had failed to read the article in full and she has misunderstood the same. According to the 4th respondent, the plaint and injunction application are results of misreading of the article. It is also claimed that the alleged malicious article was published, based on news gathered by its reporter from various sources, including sources within the political party to which the plaintiff belongs to. It is also contended that the several other magazines and newspapers have

also published, similar articles and as such the applicant cannot pick and choose or target, the respondents to seek an injunction against them. It is also claimed that the rift among the family members and their attempts to score over the other group, in capturing plum positions to the party are all, in fact, well known the entire cross section of the society and especially amongst the primary members of the political party to which the applicant belongs to viz., Dravida Munnetra Kazhagam.

12. It is also claimed that the attempt made by the applicant/plaintiff to silence the press, is an attempt to brush under the carpet, the disputes within the family and also the factionalism and groupism in the political party. It is also claimed that the details regarding the meeting with the Union Minister along with another lady Member of the Parliament were based on the information conveyed to the Reporter, by the close circle of the family of the applicant. It is also contended that the Minister or the lady M.P., who according to the report had accompanied the applicant had not denied the news item. Terming the suit as an attempt by the applicant to disarm and silence the media, from informing the public about the happenings, which according to the respondents are very relevant to the political scenario in the state. The 4th respondent seeks dismissal of the application for injunction.

13. The applicant has also produced various reports published in the bi-weekly magazine, viz. "Kumudam Reporter" published by the respondents on various dates between 19.08.2012 to 27.05.2016 and thereafter also.

14. I have heard Mr. P.Wilson learned Senior Counsel appearing for M/s.Wilson Associates for the applicant, Mr.Sathish Parasaran, learned Senior Counsel appearing for Mr.R.Parthasarathy for the 1st respondent and Mr.R.Amizhdhu, learned counsel appearing for the respondents 2 to 7.

15. Mr.P.Wilson, learned Senior counsel appearing for the applicant would draw my attention to the various articles published by the respondents in their bi-weekly magazine called "Kumudam Reporter" and contend that the each and every article is a malicious propaganda against the applicant/plaintiff and her family members. Mr.Wilson, would submit that without exception in almost all the issues of the magazine, there is an article or a cartoon or some kind of publication in the form of the letters to editor etc., in which a direct or a veiled reference is made to the applicant/plaintiff or any one of her family members. This according to Mr. P. Wilson, is because of the fact that the applicant's father was the Chief Minister of the State, when the Managing Director of the publication, viz. the 1st respondent herein, was arrested on a complaint made by one Jawahar Palaniappan,

who also claimed to have stakes in the business of Kumudam publication.

16. Mr.P.Wilson would also refer to the fact that at the instance of the father of the applicant, a leading journalist of Tamil Nadu was required to mediate between the parties and the father of the applicant Sri.M.Karunanidhi, who was the then Chief Minister had even made an announcement in the assembly regarding the efforts taken by the Government to settle the dispute between the two warring factions regarding the ownership of “Kumudham” publication. This according to Mr.P.Wilson, had led to the 1st respondent entertaining a grouse against the applicant and her family. In order to wreck vengeance and to damage the reputation of the plaintiff/applicant’s family as well as the political party to which they are attached the 1st respondent had started utilizing the bi-weekly magazine, viz. “Kumudham Reporter” to tarnish the image of the applicant/plaintiff, her family members and the political party, viz. Dravid Munnetra Kazhagam by publishing articles, which contain false propaganda and insinuations against them.

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17. Mr.P.Wilson, learned Senior Counsel would also take me through various articles published and point out that in each and every article, there has been some or other derogatory remark or comment made against the

applicant and her family members. Mr.P.Wilson would also draw my attention to the recent article, which relates to the fire accident in the Kurangani Forest, wherein the respondents have maliciously stated that the estate which is near the accident site is owned by the former husband of the applicant and contend that the applicant had in fact divorced her husband in 1989 and to connect the applicant with the ownership of an estate of a person, whom she had divorced even in 1989 is nothing but a malicious propaganda attempted by the respondents. Mr.Wilson would contend that there should be an order of injunction restraining the respondents from publishing any defamatory article about the applicant or her immediate family members at least without seeking a clarification from them.

18. Mr.Wilson, learned Senior Counsel would also rely upon various judgments of the Hon'ble Supreme Court as well as this Court. He would contend that the Right to Privacy, which has now been given an elevated status of a Constitutional Right, in view of the judgment of the Hon'ble Supreme Court in ***Justice K.S.Puttaswamy and Ors v. Union of India and Ors.***, reported in **2017 (6) MLJ 267**, should be protected by the Court. According to him, of course, the Right to Free Speech is a very valuable right in a democracy, but there can be reasonable restrictions on the said right also and the very fact that the Right to Privacy has been held to be a

Constitutional Right, the Right to Privacy by itself would be a reasonable restriction on the Right to Free Speech. No one can claim that the Right to Freedom of Speech, protected by Article 19 (1) (a) of the Constitution of India, is an absolute right and it gives an unbridled license to talk or write anything and everything about anybody and everybody. Contending that once the Right to Privacy has also been recognized as a Constitutional Right, in view of the Judgment of the Hon'ble Supreme Court in **Justice K.S.Puttaswamy's** case, Mr.P.Wilson, would plead that there can be and there shall be restrictions on the Right to Freedom of Speech particularly, when it relates to an individual. He would also rely upon the judgment of the Hon'ble Supreme Court in **R.Rajagopal alias R.R.Gopal and Another v. State of Tamil Nadu and Others**, reported in **AIR 1995 SC 264**, wherein, the Hon'ble Supreme Court had dealt with a case, which relates to publication of an autobiography of a convicted person.

19. Mr.Wilson, learned Senior Counsel would also invite my attention to the Judgment of the Division Bench of this Court in **A.Raja and another v. P.Srinivasan, Publisher and Printer of Junior Vikatan, Vasan Publications Pvt Ltd., Chennai and Others**, reported in **2009 (8) MLJ 513**; **Selvi. J.Jayalithaa v. Penquin Books India**, reported in **2013 (54) PTC 327**, to contend that the Right to Freedom of Speech enshrined in the Article

19(1) (a) of the Constitution of India is not an absolute right and it can be subject to reasonable restrictions on the touch stone of Right to Privacy.

20. Mr.P.Wilson, would also rely upon the Judgment in ***Sanjoy Narayan Editor in Chief Hindustan & Ors. v. High Court of Allahabad***, reported in **2011 (13) SCC 155**, wherein, the Hon'ble Supreme Court had observed that the unbridled power of the media can become dangerous if check and balance is not inherent in it. This power must be carefully regulated and must reconcile with a person's fundamental right to privacy. Relying heavily on the observations of the Nine Judges' Bench of the Hon'ble Supreme Court in ***Justice K.S.Puttaswamy's*** case, Mr.Wilson would contend that the observations of the Hon'ble Supreme Court made in the said judgment in the context of the State actions, which are likely to infringe the privacy of an individual should also be extended actions of non State actors and those principles could be applied in the zone of Tort Law also.

21. Per Contra, Mr.Sathish Parasaran, learned Senior Counsel appearing for the 1st respondent would contend that it is settled position of Law that no Law shall impose the prior restraint or a gag order upon the Press or Media restraining it from publishing future articles. He would also

further contend that even assuming that the articles published by the Media, amounts to character assassination of an individual, there is no justification for a blanket injunction restraining publication of such articles in future. Mr.Sathish Parasaran, would invite my attention to the observations of the Division Bench of this Court in ***R.Rajagopal & anr. V. J.Jayalalitha***, reported in **2006 (2) LW 377**, wherein the Division Bench had observed as follows :

“The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says that he intends to justify it or to make fair comment on a matter of public interest.”

22. He would also contend that the applicant being a politician and a public figure, it is the duty of the Press/Media to publish information about her, since, according to him, the public will be interested in knowing about it. Claiming that the 1st defendant has a right to make a fair comment as a responsible journalist. Mr.Sathish Parasaran, would submit that there is no justification for granting an injunction as claimed by the applicant. Of course, Mr.Sathish Parasaran, would concede that the Press/Media cannot claim an absolute right to publish anything and everything about an individual, even though he/she is a politician associated with the public life.

He would however, contend that the scope for restraining the media is limited only to certain aspects and cannot be extended beyond a reasonable limit so as to prevent any publication about an individual, who is holding a public office.

23. It is also the contention of the Mr.Sathish Parasaran, learned Senior counsel that the remedy of the public figure would arise only after the publication and there is no law under which they could prevent publishing of material on the ground that such material is likely to be defamatory. Pointing out that the articles published by the respondents, which relates to the relationship between the applicant and her brother, who is also a prominent politician in the State. Mr.Sathish Parasaran, would contend that the relationship between the applicant and her brother are matters of public interest having wide ramification in the polital sphere of the State and hence there cannot be a restraint order as prayed for by the applicant.

24. To buttress his submission Mr.Sathish Parasaran, would rely upon the observations of this Court in ***R.Rajagopal's case***, cited supra, wherein it was held that

“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.”

It is also the contention of the Mr.Sathish Parasaran that those who are holding Public office cannot be hyper sensitive to comments made upon them. The sum and substance of the submissions of the learned Senior Counsel appearing for the respondents is of course, the Right to Privacy is recognised as a fundamental right, but the very recognition of the said right as a fundamental right would automatically mean that it is subject to reasonable restriction. The reasonable restrictions according to him are as pointed out by the Hon’ble Supreme Court in ***R.Rajagopal alias R.R.Gopal and Another v. State of Tamil Nadu and Others***, as follows:

“A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters.”

25. He would also point out that the Hon’ble Supreme Court in the said decision had hastened to add that if any of these matters are subject to Court proceedings and they become matters of public record, there cannot be a prohibition against a newspaper or a magazine from publishing the said material. Relying upon the judgment in ***Khushwant Singh and another v.***

Maneka Gandhi, reported in AIR 2002 Delhi 58, Mr.Sathish Parasaran, would contend that while balancing the right of an author to publish and the right of individual against invasion of the privacy, the remedy is only for damages after the publication and not a preventive order before publication.

26. I have considered the rival submissions. The question that arises for consideration, on the rival pleadings and on the arguments addressed by the learned Senior Counsels on either side is as to:-

What is the power/duty of the Court, when it is called upon to balance the two rights viz., a Right of Free Speech and Expression enshrined in Article 19(1)(a) of the Constitution of India and the Right of Privacy of an individual, which has acquired a new dimension of the constitutional right, in view of the judgment of the Hon'ble Supreme Court in **Justice K.S.Puttaswamy's** case? This task of balancing these two rights has always been daunting task for the Courts. We have the applicant seeking an order of an injunction on the contention that the respondents cannot be allowed to continuously publish articles, which contain either a direct or indirect reference to her, her immediate family members and even persons who are remotely connected with her, and the respondents on the other hand, who claim to be a very responsible Press harping upon the Right to Free Speech and Expression and contending that the said right which

include a right to publish any material, which according to it, is in public interest.

27. In the report of the group of experts on privacy headed by **Hon'ble Mr.Justice A.P.Shah**, the former Chief Justice of this High Court, the question of balancing the Right to Privacy against the right of free speech has been adverted to, in the said report, the group of experts after referring to the Judgment of the Hon'ble Supreme Court in **R.Rajagopal alias R.R.Gopal and Another v. State of Tamil Nadu and Others**, have observed as follows:-

"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".

28. The committee of experts have also pointed out that the restrictions on the exercise of Freedom of Expression on the ground of privacy may at times violate the said right guaranteed under Article 19 (1) (a) of the Constitution of India. The report further observes that on considering the freedom of expression and privacy, there is a fundamental question about the relative of Right to Privacy and Expression. Because the two values are in tension, a decision to protect privacy to limit free expression

and decision to protect free expression is a limit for Right to Privacy and public interest is used as a test to determine the right balance. The report also refers to the extent to which the freedom of expression should be limited in order to protect privacy of public figures. While setting out the exceptions to the Right to Privacy, the report suggest the following as exceptions to the Right to Privacy.

1. National Security
2. Public Order
3. **Disclosure in Public Interest**
4. Prevention, Detection, Investigation and Prosecution of Criminal Offences and
5. **Protection of the individual or of the rights and freedom from others.**

29. In **Justice K.S.Puttaswamy's** case, the Hon'ble Mr.Justice Sanjay Kishan Kaul, has considered the scope of Right to Privacy vis-a-vis the Right to Free Speech. While dealing with the privacy concerns against the State his Lordship has observed as follows:

"The concept of 'invasion of privacy' is not the early conventional thought process of 'poking ones nose in another person's affairs'. It is not so simplistic. In today's world,

privacy is a limit on the government's power as well as the power of private sector entities."

It was further observed that the

"The notions of goodness, fairness, equality and dignity can never be satisfactorily defined, they can only be experienced. They are felt. They were let abstract for the reason that these rights, by their very nature, are not static. They can never be certainly defined or applied, for they change not only with time, but also with situations."

The following comments in **Robertson and Nicol on Media Law** have been quoted with approval by the learned Judge.

"Individuals have a psychological need to preserve an intrusion-free zone for their personality and family and suffer anguish and stress when that zone is violated. Democratic societies must protect privacy as part of their facilitation of individual freedom, and offer some legal support for the individual choice as to what aspects of intimate personal life the citizen is prepared to share with others. This freedom in other words springs from the same source as freedom of expression: a liberty that enhances individual life in a

democratic community.”

30. The learned Judge has further observed as follows:

“475. An individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needs to exist not only against falsehood but also certain truths. It cannot be said that a more accurate judgment about people can be facilitated by knowing private details about their lives – people judge us badly, they judge us in haste, they judge out of context, they judge without hearing the whole story and they judge with hypocrisy. Privacy lets people protect themselves from these troublesome judgments”

476. There is no justification for making all truthful information available to the public. The public does not have an interest in knowing all information that is true. Which celebrity has had sexual relationships with whom might be of interest to the public but has no element of public interest and may therefore be a breach of privacy. Thus, truthful information that breaches privacy may also require protection.

477. Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent.”

31. In the majority judgment in **Justice K.S.Puttaswamy's** case, Hon'ble Justice Dr.D.Y.Chandrachud, has quoted the following passage from the Judgment of the Hon'ble Supreme Court in **Advocates on Record Association v Union of India** reported in **2016 (5) SCC (1)**:

"The balance between transparency and confidentiality is very delicate and if some sensitive information about a particular person is made public, it can have a far-reaching impact on his/her reputation and dignity. The 99th Constitution Amendment Act and the NJAC Act have not taken note of the privacy concerns of an individual. This is important because it was submitted by the learned Attorney General that the proceedings of NJAC will be completely transparent and any one can have access to information that is available with NJAC. This is a rather sweeping generalization which obviously does not take into account the privacy of a person who has been recommended for appointment, particularly as a Judge of the High Court or in the first instance as a Judge of the Hon'ble Supreme Court. The right to know is not a fundamental right but at best it is an implicit fundamental right and it is hedged in with the implicit fundamental right to privacy that all people enjoy. The balance between the two implied fundamental rights is difficult to maintain, but the 99th Constitution Amendment Act and the NJAC Act do not even attempt to consider, let alone achieve that balance."

32. Hon'ble Mr.Justice Dr.D.Y.Chandrachud, has also referred to

India's commitment under the International Law relating to Privacy had observed as follows:

“129. The recognition of privacy as a fundamental constitutional value is part of India's commitment to a global human rights regime. Article 51 of the Constitution, which forms part of the Directive Principles, requires the State to endeavour to “foster respect for international law and treaty obligations in the dealings of organised peoples with one another.” Article 12 of the Universal Declaration of Human Rights, recognises the right to privacy:

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Similarly, the International Convention on Civil and Political Rights provides Article 17 of the ICCPR provides thus:

The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of the right.”

33. I hasten to add, at this juncture, that there is no Municipal Law in India to protect the Right to Privacy as it is. At the same time, one cannot

loose sight of the declaration that has been made by Nine Judges' Bench of the Hon'ble Supreme Court, wherein, it has been made clear that the Right to Privacy is a fundamental right. In para 188 of the lead judgment, the Hon'ble Justice Dr.D.Y.Chandrachud, had observed as follows:

*“f. Privacy includes at its core **the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation.** Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.”*

34. Honble Mr.Justice Rohinton Fali Nariman, in his judgment refers to the judgment of **R Rajagopal v State of Tamil Nadu**, as well as the judgment of the Hon'ble Supreme Court in **Govind v. State of Karnataka** and concludes that the Right to Privacy is a Constitutional Right. The conclusions of the Hon'ble Supreme Court on the reference that was disposed of are as follows:

“(i) The decision in M P Sharma which holds that the right to privacy is not protected by the Constitution stands over-ruled;

(ii) The decision in Kharak Singh to the extent that it holds that the right to privacy is not protected by the Constitution stands over-ruled;

(iii) The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

(iv) Decisions subsequent to Kharak Singh which have enunciated the position in (iii) above lay down the correct position in law.”

35. The concluding remarks of Hon’ble Mr. Justice Sanjay Kishan Kaul, are as follows:

*“Let the right of privacy, an inherent right, be unequivocally a fundamental right embedded in part-III of the Constitution of India but subject to the restrictions specified, relatable to that part. This is the call of today. **The old order changeth yielding place to new.**”*

Therefore, the Hon’ble Supreme Court had while recognising the right of privacy is a fundamental right, in fact called for a new order, which would offer a preeminent position to the right of privacy.

36. In view of the above stated position of law declared by the Hon’ble

Supreme Court, the facts of the present case need to be examined in the light of the pronouncement of the Hon'ble Supreme Court in **Justice K.S.Puttaswamy's** case. I am alive to the fact that **Justice K.S.Puttaswamy's** case, was with reference the nature and scope of the Right to Privacy of an individual vis-à-vis the State. At the same time, I am of the considered opinion that the principles laid down therein on the scope of the Right to Privacy as well as in attempting the balance between the Right to Privacy and Right to Free Speech, can be safely applied to the case on hand, in as much as, the Hon'ble Supreme Court was also concerned with the Right to Free Speech, enshrined the Article 19(1)(a) of the Constitution of India, while discussing the scope of the Right to Privacy,

37. I am also alive to the fact that the applicant as well as the many of her immediate family members are prominent public figures and have been holding high public offices in the State for quite some time now. Will that alone provide a license to others, particularly the Press and Media, to write something defamatory (either true or false) about them, on the ground that such information is in the public interest. As has been pointed out by Hon'ble Mr.Justice Sanjay Kishan Kaul in **Justice K.S.Puttaswamy's** case, all matters in which the public interested may not be in public interest. In **A.Raja and Another v. P.Srinivasan, Publisher and Printer of Junior**

Vikatan, Vasan Publications Private Limited, Chennai and Others, reported in **(2009) 8 MLJ 513**, a Division Bench of this Court had considered the right of the family of a Politician/a Union Minister to be protected from invasion by the Press and Media. In fact the course of the said Judgment, a Division Bench has observed as follows:

“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.”

38. I do not want to burden this judgment with the details of the publications made. Suffice to say, most of the publications made and produced in the form of a type set, contain some sort of insinuation or other against the applicant or her immediate family members. Mr.Sathish Parasaran, learned Senior Counsel would heavily rely upon the observations of the Division Bench of this Court in **R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and others v. J.Jayalitha and another** reported in **2006 (2) LW 377**, which read as follows:

“Even assuming that the articles published by the appellants

amount to character assassination of the respondents, there is no justification for granting a blanket injunction restraining the appellants from publishing any articles, in future. It would not be appropriate for us to examine the articles at this stage on the touchstone of defamation, but what we do observe is that they are not of such a nature warranting a restraint order especially when the appellants are willing to face the consequences in a trial in case the same are held to be defamatory and the plea of the appellants of truth is yet to be analysed by the Court."

But the very same Division Bench, in the later portion of the judgment has observed as follows:

"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."

39. After observing so a Division Bench had after referring to ***R.Rajagopal v. State of Tamil Nadu***, reported in **1994 (6) SCC 632**, has observed that:

"whenever the appellants therein proposed to publish any article purely concerning personal life of the first respondent or the second respondent or both, the appellants shall forward their queries and/or the gist of the proposed article, as the case may be to the fax number furnished by the

learned counsel appearing for the respondents. The first respondent or the second respondent or both as the case may be shall respond to the queries of the appellants in relation to their proposed article to the fax number of the appellants.”

Therefore, a limited right to publish was granted by the Division Bench. To a specific query from the Court as to the relevancy of the ownership of an estate by the former husband of the applicant in the Kurangani Forest, where the forest fire broke out recently killing nearly 23 people, the startling response of the Senior Counsel for the respondents, upon instructions, was that the respondents have to sell their magazines. This, in my considered opinion, exposes the mind of the respondents to write anything and everything, which is even remotely connected to the applicant, in order to enhance their commercial interest. I am unable to accept this as a responsible journalistic approach. An unfortunate fire accident, which took place in the Forest is sought to be related to somebody, who was connected with the applicant some 30 years back, only with a view to enhance the sale of the magazine. It is this wild imagination that is called **responsible journalism**.

40. The theory that there cannot be a prior restraint or a gag order upon the Press or Media stands diluted, after the judgment of the Hon'ble

Supreme Court in **Justice K.S.Puttaswamy's** case. The observations of Hon'ble Mr.Justice Sanjay Kishan Kaul, extracted earlier would show that the Media cannot in the guise of public interest publish anything and everything, which may be interesting.

41. As opposed to the plea of the respondents in **R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and others v. J.Jayalitha's** case, cited supra, that the defence of truth is conspicuously absent in the pleadings of the respondents in the case on hand, all that is stated in the counter affidavit is that, the articles are being published based on information provided by reliable sources, including persons belonging to the very close family of the applicant. The source of that information has not been disclosed, therefore, the respondents in this case have not specifically taken the defence of truth. Of course, truth may be a defence to action for defamation, but whether publication of all truth about an individual particularly relating to his/her personal life is in public interest or not is a larger question that may arise.

42. In balancing the two rights viz. the Right to Privacy and the Right to Freedom of Speech, the element of public interest is always based as a touch stone. The fact, as to whether, the former husband of the applicant is or was the owner of an estate near the location, where the fire accident

happened recently may be of some interest to the public, but definitely cannot be said to be in public interest. Similarly, there are several other articles published by the respondents, which suggest strained relationship between her and her brother (who also happens to be a prominent politician), some talk of her relationship between her and a Police Officer, some attributing certain motives in her meeting with a Union Minister and certain cartoons and caricatures, which refer to the detention of the applicant etc. Of course, the veracity of those statements made in those articles or the question as to whether they are defamatory in nature or not will have to be decided only after trial, but at the same time the respondents, in my considered opinion, cannot be allowed to go on publishing articles, which do not relate to the public life of the applicant, as a member of the parliament or as a leader of the political party or as a daughter of the former Chief Minister or as a sister of the former Deputy Chief Minister.

43. Therefore, in my considered opinion, in the light of the law laid down by the Hon'ble Supreme Court in **Justice K.S.Puttaswamy's** case, relating to the Right to Privacy, I am constrained to conclude that though there cannot be a blanket injunction as rightly contended by Mr.Sathish Parasaran, at the same time, there cannot be an order in favour of the respondents enabling them to publish anything and everything in the guise

of public interest. I am therefore, of the opinion that the order of injunction granted of 05.01.2014 and modified by the order dated 25.04.2016 is to be made absolute, subject to the following conditions.

(i) The respondents shall not publish anything regarding the private life of the applicant, viz., her family, her marriage, procreation, motherhood, child-bearing and education, without the consent of the applicant.

(ii) Whenever, the respondents propose to publish any article relating to the private life of the applicant, claiming that it is in public interest, the respondents shall forward their queries/gist or the full article to the applicant to her email ID (to be furnished) and await for her response. If any response is received within 48 hours, the response shall also be published with the same prominence of the article. If no response is received within the 48 hours, the respondents will be at liberty to go ahead and published the article.

44. It is made clear that the above restrictions are only with reference to any publication, which involved some matter which is exclusively private. It is not extended to the functions of the applicant as a Member of the Parliament or as a Leader of the Political Party.

45. In fine, OA No.871 of 2014 is allowed, subject to the observations made above and vacate injunction petition will stand dismissed.

16.05.2018

jv

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order



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R.SUBRAMANIAN,J.

jv



Pre Delivery Order

Original Application No.871 of 2014
and Application No.6297 of 2015
in CS No.705 of 2014

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