

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.04.2019	Delivered on 03.06.2019
-----------------------------------	------------------------------------

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Original Application No.485 of 2018
in CS No.312 of 2018

R.Chandrasekar

... Applicant

Vs

1. 'Nakkheeran' Tamil Magazine,
 No.105, Janijahan Khan Road,
 Royapettah, Chennai 600 014,
 Rep. By its Editor, Mr.Nakkheeran Gopal.

2. Mr.Nakkheeran Gopal,
 Editor, Publisher & Printer,
 'Nakkheeran' Tamil Magazine,
 No.105, Janijahan Khan Road,
 Royapettah, Chennai 600 014.

3. Mr.Damodaran Prakash,
 Chief Special Reporter,
 'Nakkheeran' Tamil Magazine,
 No.105, Janijahan Khan Road,
 Royapettah, Chennai 600 014.

...Respondents

WEB COPY

Prayer: Original Application is filed under Order XIV Rule 8 of the Original Side Rules read with Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, praying to grant an order of ad-interim injunction, restraining the

respondents/defendants and their men and agents from in any manner, publishing any further defamatory articles, statements, photos or caricatures imputing the character or insinuating the reputation or linking the name of the applicant/plaintiff and his family members with any person or defaming the name of the applicant and his family members in any manner, pending disposal of the above suit.

For Petitioner : Mr.S.Doraisamy
for Mr. V.Elangovan

For Respondents : Mr.P.T.Perumal

ORDER

The suit has been filed by the applicant seeking damages of a sum of Rs.1,00,00,000/- for the alleged loss of reputation/defamation caused by the respondents by publishing defamatory, misleading and false allegations against the applicant and his family members, in their Biweekly Magazine Nakkheeran. A prayer for permanent injunction restraining the respondents from publishing any further defamatory articles, statements, photos or caricatures imputing the character or insinuating the reputation or linking the name of the applicant and his family members with any person has also been sought for.

2. The applicant would claim that the respondents who run a Biweekly Magazine called Nakkheeran have published an Article in its issue dated April 2 to 4, 2018, containing false, incorrect and defamatory statements, which has caused serious and extensive damage to his name and that of his family members. It is his claim that the publication not only contains false statements, but also links the applicant to a Minister and described him as the shadow of the Minister. He would also claim that the contents of the publication are far from truth. Hence, according to him there should be an order of injunction restraining the respondents from making any further publications similar in nature.

3. This application is resisted by the respondents contending that a pre-trial injunction in the matter of defamation would amount to curtailing the freedom of speech and expression, which is a fundamental right under the Constitution of India. It is also the contention of the respondents that the applicant is a politician and he and his family members have contested various Elections. Therefore, he cannot claim that publication of their photographs would amount intrusion into their privacy. The respondents have also produced material to show that the wife of the applicant has contested for the post of councilor in the Coimbatore Municipal Corporation.

It is also pointed out that the applicant is the Editor of “Namadhu Puratchithalaivi Amma” Newspaper known to be the mouthpiece of the ruling party.

4. I have heard Mr.S.Doraisamy, learned counsel appearing for Mr.V.Elangovan, for the applicant and Mr.P.T.Perumal, learned counsel appearing for the respondents.

5. Mr.S.Doraisamy, learned counsel appearing for the applicant would submit that as a Newspaper/Magazine, the respondents have a right to publish articles or news items, but at the same time the freedom of speech made available to them under the constitution is subject to reasonable restrictions and they cannot right whatever they like about others. It is also pointed out that the publication of the photographs of the family members of the applicant is wholly unnecessary and it would affect the privacy of the other family members of the applicant. Therefore, Mr.S.Doraisamy, would justify the prayer for grant of injunction.

6. Mr.P.T.Perumal, learned counsel appearing for the respondents, on the other hand, would submit that it is settled law that there cannot be a pre-trial injunction in the matters of libel unless, it is shown that all defences

would fail. He would also submit that various newspapers have published various news items about the applicant and his family members in the recent past. Drawing my attention to news items in several dailies, Mr.P.T.Perumal would contend that the allegations made in the impugned publication cannot be brushed aside as totally false.

7. Pointing out to the fact that the applicant has been appointed as the Editor of Newspaper called “Namadhu Puratchithalaivi Amma”, which according to Mr.P.T.Perumal, is the mouthpiece of AIADMK party, Mr.P.T.Perumal, would contend that the applicant is a politician and therefore, he cannot seek a prohibitory order of injunction restraining journalists or the Media from writing about him. The learned counsel would also rely upon various decisions in support of their contention.

8. By an interim order dated 04.05.2018, this Court had granted a limited injunction restraining the respondents from publishing the photographs of any of the near relatives of the applicant in any of the Articles published by the respondents. It is also seen that the respondents have published an apology for posting the photograph of the family of the applicant in the Article. Mr.P.T.Perumal, learned counsel would make it clear that they would not publish the photographs of the family members of

the applicant in future.

9. I have considered the entire law relating to pre-trial injunctions in ***S.P.Velumani v. Arappor Iyakkam*** and another and other connected matters. After elaborate consideration of the principles of law relating to grant of pre-trial injunction, I have concluded that pre-trial injunction in the matters of libel cannot be granted unless, it is shown that all defences would fail. In the case on hand, I find *prima facie* material to show that there is a justification in the plea of justification made by the respondents. Admittedly, the applicant is a politician. He is an office bearer in the AIADMK party and his wife has contested for the post of councilor in Coimbatore Corporation. The association of the applicant with one of the Ministers is also highlighted by Mr.P.T.Perumal, to show that the allegations made in the impugned article cannot be brushed aside as false. Once the respondents take the defence of justification, I do not think an order of injunction could be granted restraining publications.

10. In ***Ms.Kanimozhi Karunanidhi v. P.Varadarajan and others***, reported in **2018 (3) CTC 710**, I have considered the right to free speech and expression, vis-à-vis the right to privacy. I had concluded that the Press/Media does not have an unbridled right to publish anything and

everything about the private life of any individual. Considering the nature of the prayer sought for, I am of the considered opinion that the limited injunction granted by way of an interim order dated 04.05.2018 can be made absolute, thereby preventing the respondents from publishing photographs of the family members of the applicant in any of their articles relating to the applicant. Other than that I do not think the applicant has made out a *prima facie* case for grant of injunction as prayed for.

11. In fine, the limited order of injunction granted on 04.05.2018 restraining the respondents from publishing the photographs of any of the near relatives of the applicant in any of the articles alone is made absolute and the application will stand dismissed in other aspects. No costs.

03.06.2019

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

सत्यमेव जयते
WEB COPY

R.SUBRAMANIAN,J.

jv



Pre Delivery Order

Original Application No.485 of 2018
in CS No.312 of 2018

WEB COPY

03.06.2019