

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 2nd June, 2020.**

+ **CS(OS) 510/2016**

SASIKALA PUSHPA

..... Plaintiff

Through: Mr. Sushil Bajaj with Mr. Bhavook Chauhan, Ms. Aasifa Sheikh & Ms. Praavita Kaushik, Advs.

Versus

FACEBOOK INDIA & ORS.

..... Defendants

Through: Ms. Richa Srivastava with Mr. Shijo George, Mr. Dhruv Bhatnagar & Ms. Nayantara Narayan, Advs. for D-1.
Mr. Arun Kathpalia, Sr. Adv. With Mr. Neel Mason & Ms. Ridhima Pabbi, Advs. for D-2 & 3.
Mr. Ruchir Mishra with Mr. M.K.Tiwari & Mr. Abhishek Rana, Advs. for UOI/D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This suit, though instituted on 29th September, 2016, as existing now vide amended plaint dated 30th October, 2018, has been instituted against (i) Facebook Inc., (ii) Google LLC, (iii) YouTube LLC, (iv) Union of India, Ministry of Information and Broadcasting, and (v) Union of India, Department of Telecommunications, for (a) permanent injunction restraining not only the defendants but other persons from publishing, broadcasting, distributing or disseminating in any form whatsoever any defamatory material “including the purported photographs/video/audio messages

referred to in the plaint, relating to or arising from, in connection with any alleged acts or behavior relatable to the plaintiff; and, (b) mandatory injunction directing the defendants and all others to remove/delete the false, concocted and fabricated photographs/videos/audio messages or any other material aforesaid.

2. It is the case of the plaintiff in the amended plaint aforesaid, (i) that the plaintiff is a sitting Member of Rajya Sabha, having been nominated in the year 2014 by All India Anna Dravida Munnetra Kazhagam (AIADMK) Party; (ii) that the plaintiff in the year 2011, after winning the Local Body Elections was elected as the Mayor of Toothukudi; (iii) that the plaintiff was also the Secretary of Women Wing of AIADMK Party; (iv) that on the plaintiff on 1st August, 2016 informing the Parliament that she had been slapped by a leader of AIADMK Party at Chennai and was facing death threats, she was expelled from AIADMK Party and on the same day her ancestral house in Uvari village in Tamil Nadu was attacked; (v) that a false complaint dated 8th August, 2016 was also filed by one Ms. Banumati wife of late Karupasamy against the plaintiff and her family; (vi) that Union of India exercises regulatory control over the print, electronic and internet media of the country and have been arrayed as necessary parties to the present suit to enable this Court to do comprehensive adjudication and pass necessary directions; (vii) that the plaintiff was continuously receiving threats and baseless and false allegations were being made against the plaintiff; one of such threat was of distribution of photographs and video on social media defaming and embarrassing the plaintiff; (viii) that the persons threatening the plaintiff wanted the plaintiff to resign from her constitutional post; (ix) that the plaintiff has learnt that few unknown persons have

uploaded the plaintiff's photograph/video which is being circulated through the social media i.e. Facebook, Twitter, YouTube and WhatsApp; the list of URLs at which the said photographs were being circulated is set out in the plaint; (x) that on 25th September, 2016, the plaintiff started receiving phone calls from her friends, acquaintances and family members, of the photographs of the plaintiff having been uploaded on the social media; (xi) that the said photographs tarnish the image of the plaintiff; (xii) that such photographs/videos which are being circulated, do not exist and have been morphed, fabricated, concocted and forged; (xiii) in paragraph 13 that,

“It is respectfully submitted that while completely denying the veracity of the purported photograph/video/audio messages purely as a theoretical surmise even if any photograph/video were to depict in whole or part is a private act such as consensual act does not in any manner become culpable. Further, such a photograph/video would raise no public interest issue. Publicity to the content of such a photograph/video would only be for sensational and salacious purpose and would amount to a gross and irreparable violation of an individual's privacy and it would be *per se* defamatory...”

(xiv) that no attempt of any verification of the allegations or the authenticity of the alleged photograph/video/audio messages was undertaken before uploading on the social media; (xv) that uploading of such alleged photographs/videos/audio messages constitutes a grave and irreversible violation of rights of the plaintiff to reputation and violates all legally, judicially established norms of privacy and has caused irreparable damage to

the plaintiff; (xvi) that such acts are also violative of plaintiff's fundamental rights; (xvii) that the persons uploading the said photographs have failed to abide by the minimum moral standards of ethics and etiquettes; (xviii) that the freedom of Press as envisaged under Article 19(1) of the Constitution of India is not absolute right and is subject to reasonable restrictions under Article 19(2); excessive adverse publicity beyond fair reporting injure the reputation of the person and affects fair administration of justice; (xix) that the plaintiff has a right to maintain dignity, right to live with dignity, right to preserve reputation, all facets of right to life under Article 21 of the Constitution of India; and, (xx) in paragraph 33 that,

“The cause of action has arisen in Delhi as the alleged forged, fabricated and concocted pictures/video being circulated on the social media is being portrayed as though the same was taken at plaintiff's residence in Delhi. Furthermore, plaintiff was informed about the same when she was residing in Delhi. The false, fabricated and concocted pictures/videos are being circulated on the internet and social media which is regulated and controlled by the defendants No.4&5 having their head office at New Delhi.”

3. The suit came up first before this Court on 4th October, 2016, when while issuing summons/notice thereof, vide *ex-parte* ad-interim injunction the defendants No.1 to 4 were restrained from publishing, broadcasting, distributing or disseminating in any manner any defamatory material in the nature of photographs relatable to the plaintiff and it was clarified that the defendants were also obliged to take all steps to remove the impugned

content from the website. Vide order dated 17th September, 2018, the defendants were directed to forthwith remove the material on the URLs details whereof were given by the plaintiff in the amended plaint.

4. It may be mentioned that that the plaintiff in the suit as originally filed, though impleaded Facebook, Google and YouTube but not by their correct description or the correct entities thereof and owing where to a number of applications were filed from time to time and substitution of defendants ordered.

5. Facebook Inc. USA has filed a written statement, pleading (a) that Facebook Inc. is an 'intermediary' as defined under Section 2(1)(w) of the Information Technology Act, 2000 (IT Act) and is omitted from any liability arising from third party content posted to the Facebook Services as per Section 79 of the IT Act; (b) that the said Section 79(1) has an overriding effect by virtue of Section 81 of the IT Act; (c) that Facebook Inc. as an intermediary has no role in sharing, transmitting, selecting the receiver of any transmission and/or selecting or modifying the information contained in any information of third party; (d) that there is no averment in the plaint regarding any failure of Facebook Inc. to comply with Section 79(2) or 79(3) of the IT Act and does not even allege that the protection under Section 79 of the IT Act is not available to Facebook Inc.; (e) that as per the dicta of the Supreme Court in *Shreya Singhal Vs. Union of India* (2015) 5 SCC 1, the liability of an intermediary arises only where the intermediary upon receiving actual knowledge from a valid Court order or otherwise, that unlawful acts relating to Article 19(2) of the Constitution of India are going to be committed, fails to expeditiously remove or disable access to such

material; (f) that an intermediary is not obliged to scan all information being hosted on its portal, for infringement of the rights of all those persons who have at any point of time complained to the intermediary; (g) that every webpage has a link address on the internet i.e. a Uniform Resource Locator (URL) which is a standardised device to identify and locate content and other resources located on the internet; (h) that the plaintiff, in the plaint has identified only some of the impugned content by URL and out of which only two pertain to Facebook Inc. and which had since been actioned by Facebook Inc. in compliance with the order of this Court; it is otherwise impractical for Facebook Inc. to locate or identify the remaining impugned content; (i) that Facebook Inc., as on 30th June, 2018, had over 2.23 billion active users of its Facebook Service worldwide and every day billions of pieces of content are posted and shared on the Facebook Service; it is impractical and not possible for the Facebook Inc. to sift through all the aforesaid content to find the content impugned by the plaintiff; (j) that Facebook Inc. is neither the author nor the publisher of any third party content including the content impugned in this suit; (k) that as per policy of Facebook Service, it has reporting tools available to report objectionable content on Facebook Service including potential violation of a person's privacy rights concerning their image on Facebook; if a person believes content available on Facebook Service to be violatable of his/her privacy rights, can report that content by using the online reporting tool; however Facebook Inc. is obliged to remove and disable access to only such content which has been directed by a Court order or by a notified Government agency to be removed; thus, even if any content is reported via online tool, Facebook Inc. as intermediary, would not be required to remove access to

the same without a Court order or direction from an authorized Government agency; (l) that the suit thus as far as against Facebook Inc. is not maintainable; (m) that there is no possibility of Facebook Inc. misusing, distorting, disseminating or publishing the impugned content to the detriment of the plaintiff; and, (n) that the other contents of the plaint are denied.

6. The defendant No.2 Google Inc. and defendant No.3 YouTube LLC have also filed a joint written statement, pleading (i) that defendant No.3 YouTube LLC is a subsidiary of defendant No.2 Google LLC; (ii) that the said defendants have complied with the order dated 17th September, 2018 by taking down / disabling of web links / URLs set out in the plaint; (iii) that the plaintiff in the plaint has also mentioned a URL linking to the general image search page for all image results when the name of the plaintiff is entered as a 'search term' in the 'search box' on the Google Search Engine by an internet user; the plaintiff did not provide a specific URL for any specific image result appearing on the said general search result page; (iv) that the defendants No.2&3 as per their policy disable any third party content from their platform if an appropriate direction is passed by the Court directing removal of such content by providing the specific URLs where the plaintiff's right have been held to be violated; (v) however the plaintiff is not entitled to any injunctions against the said defendants as sought and the injunctions as sought are vague, excessive and incapable of being complied with and also go contrary to the established principles of defamation law as well as the provisions of the IT Act and the Information Technology (Intermediary Guidelines) Rules, 2011; (vi) that the defendants No.2&3 are intermediaries (the detailed pleas of defendants No.2&3 in this respect being

the same as in the written statement of defendant No.1 Facebook Inc., are not being repeated here); (vii) that the plaintiff has no cause of action against the defendants No.2&3 without first showing any non-compliance by the defendants No.2&3 of any Court order and/or of the provisions of Section 79 of the IT Act; (viii) that the injunctions as sought would also imply a pre-publication restraint on all materials/contents available on the internet that allegedly defame the reputation of the plaintiff and which would be contrary to the settled law on pre-publication injunctions; (ix) that Google Search Engine is a free internet based search service using which any internet user can search for any pre-existing third party data and websites available on the internet; to do so, an internet user can type its search query in the 'search box' and based on such a search query, the Google Search Engine indexes and links to third party websites and other information that either images or is relevant to the search query; (x) that the defendant No.2 Google LLC merely performs the task of indexing information that is already available on independent third party websites that are beyond the control and supervision of defendant No.2; the defendant No.2 is neither the host nor the publisher of the third party content displayed on the Google Search Engine; (xi) that defendant No.2 Google LLC has no technological means by which the search results on Google Search Engine can be restricted, since such content and information is actually created, originated, hosted and managed by third party and is available on such third party websites; (xii) that under the Google terms of service, a user is categorically informed that Google Services display some content that is not of Google and that such content is the sole responsibility of the entity that makes it available; (xiii) that an internet user can report about the search

results for violation of any of their rights, using a complaint form available and pursuant to which such content is reviewed and in appropriate cases immediately taken down; (xiv) that even if the Court were to direct a Search Engine to remove the links containing allegedly defamatory content within its search results, the same would not ensure that the defamatory content itself is taken down from its source website or that the same links would not appear as search results on any other innumerable social media sharing websites and/or Search Engines available on the internet; (xv) that YouTube is an online video screening platform on which users can freely upload and share videos / audio visual content with other users; these videos are third party content and/or neither created nor owned or controlled by the defendants No.2&3; YouTube is merely a platform where videos can be uploaded and accessed on the internet on 'as is where is basis'; (xvi) that YouTube Community Guidelines also inform the users about the kind of content that is prohibited on YouTube; (xvii) that under YouTube term of service, every user/uploader categorically represents that he/she owns all rights and all necessary terms in the content he/she uploads; the user further categorically represents and warrants that no part of the video being uploaded is illegal or violates third party rights; even after uploading, all rights and liabilities in relation to the content so uploaded remain with the respective uploader and YouTube LLC simply provides a platform where such videos can be accessed on 'as is where is basis'; (xviii) that the selection/description of the video and the tags relevant to searching a video are all provided by the uploader and not by defendants No.2&3; (xix) that the uploader alone has specific knowledge of content of the video he/she uploads; (xx) that the defendants No.2&3 have neither created nor facilitated

or endorsed the content impugned in the suit; (xxi) that for defamation related to complaints under the Indian Law, the defendants No.2&3 require a Court order directing removal of such search result / video from a specific identifiable URL where the search result / video is located; (xxii) that the plaint discloses no cause of action against the defendants No.2&3 and the defendants No.2&3 are not necessary or proper parties to the suit; (xxiii) that the contents of the plaint are not in the knowledge of the defendants No.2&3 and are denied; (xxiv) that reference in the written statement itself is made to *Shreya Singhal* supra; and, (xxv) that *Sahara India Real Estate Corporation Limited Vs. Securities and Exchange Board of India* (2012) 10 SCC 603 and to *Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspaper* (1988) 4 SCC 592 do not apply to intermediaries as the defendants No.2&3 are.

7. No replications to the aforesaid written statements have been filed by the plaintiff.

8. The suit came up before the undersigned on 14th January, 2019, when finding that no person who according to the plaintiff is responsible for putting up the impugned content had been impleaded as defendant and further finding that no direction had been sought against Facebook Inc. or against Google LLC and YouTube LLC or against any other portal for disclosing the identity of such person, it was observed that the plaintiff cannot fight a proxy battle without impleading the person who has posted the impugned photographs and other content removal whereof was sought in the plaint. The counsel for the plaintiff, on enquiry during the hearing on 14th January, 2019, as to whom the plaintiff suspected, stated that the

plaintiff does not suspect anyone and there are a lot of people inimical to the plaintiff because the plaintiff was a Member of Parliament from Rajya Sabha. The counsel for the plaintiff during the hearing on 14th January, 2019 handed over the photographs to which objection was taken in the suit. However on going through the same, it was *prima facie* observed that there was nothing objectionable in the photographs. It was further observed in the order dated 14th January, 2019 that the order of removal of any content posted on the portals / e-platforms, cannot be made merely at the asking, without a case therefor being made out. It was enquired from the counsel for the plaintiff, under which provision of law, the plaintiff was entitled to seek removal of the contents / photographs put up by others, even if found to be objectionable. The counsel for the plaintiff appearing on 14th January, 2019 however only referred to the interim order dated 4th October, 2016 and could not reply to the queries. Observing that the plaintiff, to be entitled to final relief was required to justify the interim order and could not shy away from answering the queries of the Court, on the request of the counsel for the plaintiff, the hearing was adjourned to 27th February, 2019.

9. On 27th February, 2019, the counsel for the plaintiff was heard on the queries contained in the order dated 14th January, 2019. The plaintiff along with the plaint has only filed four photographs in a sealed envelope. The first photograph appeared to be from a newspaper or a click shot of a news channel, in turn having three photo frames and one of which is of the plaintiff alone and the other two besides the plaintiff also depict a man in what appears to be a private garden of a house. The second photograph is again of the plaintiff with the said man inside a room and also shows half eaten food and an empty bottle of water. The third photograph is a repeat of

one of the three frames in the first photograph i.e. of the plaintiff and the man in the private garden of a house. The fourth photograph is of the said man sitting on a chair and holding a cell phone with the plaintiff bending behind him and pointing something in the phone, again in a private garden of a house. I may mention that none of the said photographs would classify as obscene or showing the plaintiff and the man in any compromising or scandalizing position, though indeed show both smiling and happy in the company of each other. At least in one of the frames of the first photograph, the plaintiff and the man appear to be posing for the photograph though other photographs may fall in the genre of those taken without the knowledge of the plaintiff and the man. I may clarify that the plaintiff is fully clothed in all the photographs and the man, in two of the frames of the first photograph is bare chest but which is nothing out of ordinary in the State to which the plaintiff belongs.

10. The counsel for the plaintiff during the hearing on 27th February, 2019 also handed over a large number of other photographs on the URLs which vide interim order in the suit had been ordered to be blocked; however the said photographs were / have not been filed on record. The said photographs also however do not fall in the genre of obscene or having any sexual overtones.

11. The counsel for the plaintiff during the hearing on 27th February, 2019 further informed, though again not pleaded, that the man shown in the photographs along with the plaintiff belongs to Dravida Munnetra Kazhagam (DMK) Party, a political rival of AIADMK Party to which the plaintiff belongs and is a member of; that the plaintiff is married to another

person. The counsel for the plaintiff further fairly agreed that though the photographs did not qualify as obscene but contended that they were in the circumstances of the political rivalry and the plaintiff being married to another man, qualify as defamatory and pose a threat to the membership of the plaintiff of Rajya Sabha as a nominee of AIADMK. It was contended that the photographs were not genuine. Alternatively, it was argued that the photographs even if were held to be genuine and taken with the consent of the plaintiff, uploading thereof on the social media platforms violated the privacy of the plaintiff.

12. It was on 27th February, 2019 enquired from the counsel for the plaintiff that since it was the case of the plaintiff that the photographs were morphed and were defamatory of the plaintiff because showed the plaintiff in the company of a man other than her husband and who was also her political rival, whether not the said man who also figured in the photographs, removal whereof was sought, was a necessary party to the present suit. It was enquired, whether not the man shown in the photographs had an equal stake in removal or not wanting removal of the photographs and how could this Court direct removal equivalent to obliteration of photographs showing persons other than the plaintiff, without hearing the said person/s.

13. Though the counsel for the plaintiff on 27th February, 2019 stated that he did not think that the plaintiff would like to implead the said person as a defendant to the suit but further stated that he would obtain instructions.

14. The factum of the plaintiff belonging to AIADMK Party, a regional political party of the State of Tamil Nadu and though as per own averments

is widely known in the State of Tamil Nadu in comparison to Delhi, having instituted this suit not in Tamil Nadu where the plaintiff has a reputation but in Delhi where the plaintiff does not enjoy the reputation as claimed to be enjoyed by her in Tamil Nadu also shows an attempt of the plaintiff to not allow the subject litigation itself to become news in Tamil Nadu and to surreptitiously obtain the order for removal of undesirable content from the internet.

15. It was on 27th February, 2019 further enquired from the counsel for the plaintiff that since the plaintiff was a political person representing her State i.e. Tamil Nadu, in Rajya Sabha in Delhi, whether not the photographs concerning her which are admittedly not obscene but are claimed to be defamatory and showing her in the company of her political rival, constituted information which public at large has a right to know about their representatives in Parliament and how can the Court restrain such news from being disseminated.

16. The counsel for the plaintiff then again sought adjournment to obtain instructions. I may however record that the aforesaid happenings during the hearing on 27th February, 2019 are not recorded in detail in the order dated 27th February, 2019 as it was felt that if the plaintiff was choosing to not pursue the present suit owing to the damage / further damage which it is likely to cause to not only the matrimony but also to the political career of the plaintiff, as appeared from the submissions made in the hearing, the said damage should not be done by recording the same in the order of that date. While adjourning the hearing to 1st April, 2019, Mr. Arun Kathpalia, senior counsel appearing for defendants No.2&3 and which defendants were

seeking their deletion, was requested to, besides appearing on behalf of defendants No.2&3, as an Amicus Curiae also assist this Court on the questions which had arisen during the hearing.

17. The counsel for the plaintiff, on 1st April, 2019 stated that his instructions were that the plaintiff did not want to implead the man also figuring in the photographs removal of which is sought in the present suit. The counsel for the plaintiff however stated that the plaintiff would make an application to implead as John Doe the person who had uploaded the impugned photographs on the internet and that the plaintiff, to prove that the photographs were morphed, besides herself would examine an expert. It was thus contended that an opportunity for leading evidence be granted. The counsel for the plaintiff, during the hearing also drew attention to Clause 3 of the Intermediary Guidelines but upon the senior counsel for the defendants No.2&3 pointing out that the same had been read down in ***Shreya Singhal*** supra, did not press further on the said aspect.

18. The counsel for the plaintiff, on 1st February, 2019 also handed over a compilation of:

(I) my judgment dated 1st June, 2018 in CS(OS) No.291/2018 titled ***Pepsico India Holdings Pvt. Ltd. Vs. Facebook Inc.***, to contend that therein *ex-parte* direction was issued to block the URLs containing disparaging video, with further direction to block URLs containing disparaging video or other content on intimation by the plaintiff;

(II) order dated 10th October, 2018 of this Court in CS(OS) No.394/2018 titled ***Patanjali Ayurved Ltd. Vs. Meera Singh***,

contending that again therein direction was issued to Facebook and other defendants to take down / remove or block the mentioned URLs;

(III) ***Shilpa S. Shetty Vs. Magna Publications Co. Ltd.*** AIR 2001 Bombay 176, to contend that the same holds that third parties do not have right to publish about the plaintiff's private life;

(IV) ***R. Rajagopal Vs. State of Tamil Nadu*** (1994) 6 SCC 632, to contend that the same holds right to privacy to be implicit in Article 21 of the Constitution of India and a citizen has a right to safeguard the privacy of own, family, marriage, procreation, motherhood, child-bearing etc. and that in matters not relevant to the discharge of duties, a public officer enjoys the same protection as any other citizen;

(V) ***Selvi J. Jayalalithaa Vs. Penquin Books India*** (2013) 54 PTC 327 Madras, to contend that the same holds that prior consent and reasonable verification before publication to be necessary and further holds that private life not involved with the public activities enjoys privacy; and,

(VI) ***Kanimozhi Karunanidhi Vs. Thiru. P. Varadarajan*** MANU/TN/2339/2018, to contend that the same, relying on ***Justice K.S. Puttuswamy Vs. Union of India*** (2017) 10 SCC 1 case holds that an individual has a right to protect reputation from being unfairly harmed and that matters not related to the public life cannot be published.

19. Per contra, the senior counsel for the defendants No.2&3 again referred to ***Shreya Singhal*** supra.

20. Though part judgment qua the submissions made, was dictated in the Court on 1st April, 2019 itself, but remained to be completed and is being pronounced now.

21. I may at the outset record, that the a nine Judge Bench of the Supreme Court in *Justice K.S. Puttuswamy* supra was constituted to determine whether privacy is a constitutionally protected value. Prior thereto, the existence of a fundamental right of privacy was in doubt in view of *M.P. Sharma Vs. Satish Chandra, District Magistrate, Delhi* MANU/SC/0018/1954 and *Kharak Singh Vs. State of Uttar Pradesh* MANU/SC/0085/1962 containing observations that the Indian Constitution did not specifically protect the right to privacy. However, now the Nine Judge Bench has authoritatively held (i) that the right of privacy is a fundamental right; (ii) that it is a right which protects the inner sphere of the individual from interference from both State and Non-state actors and allows the individuals to make autonomous life choices; (iii) technology has made it possible to enter a citizen's house without knocking at his/her door and this is equally possible both by the State and Non-state actors; (iv) it is an individual's choice as to who enters his house, how he lives and in what relationship; (v) that the privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity; (vi) that if the individual permits someone to enter the house it does not mean that others can enter the house; the only check and balance is that it should not harm the other individual or affect his/her right; (vii) that the only permitted exception is where there is a countervailing public interest which in particular circumstances is strong enough to outweigh it; (viii) that the question to be asked is, was it necessary and proportionate for

the intrusion to take place, for example, in order to expose illegal activity or to prevent the public from being significantly misled by public claims made by the individual concern or what it necessary because the information would make a contribution to a debate of general interest; and, (ix) that the Court, in order to decide a case, must carry out a balancing operation, weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure.

22. Having perused the record and having heard the counsels on the queries raised during the hearing on 14th January, 2019, and being fully conscious that the suit is still at a pre-issue stage, I am of the opinion that the following questions arise for adjudication:

(A) Whether the suit is entitled to be put to trial on the plea of the plaintiff, of the four photographs aforesaid, as well as other photographs verbally argued to have been put on the internet, being not genuine and being morphed, forged and fabricated; and,

(B) If the above question is answered in favour of the plaintiff, whether the claim of the plaintiff against the defendants, for removal of the said photographs from the internet and/or for blocking of the access to the said photographs is required to be put to trial.

(The answer to the above question would entail adjudication of, whether on the averments in the plaint and the documents filed therewith, a case of defamation of the plaintiff is made out and whether any special law or principles are to be applied qua defamation through the medium of internet.)

23. Having also researched the law on the subject, besides considering the judgments cited by the counsels, I hold the plaintiff to be failing in both the questions above. My reasons therefor are as under:

(I) As far as the claim of the plaintiff, of the impugned photographs showing the plaintiff with a man, having been morphed, forged and fabricated is concerned, the same, on a reading of the plaint is found to be half-hearted, vague and without the requisite particulars. The counsel for the plaintiff during the hearing admitted that the claim of the plaintiff to the reliefs is not based on the impugned photographs being obscene. It is not so pleaded in the plaint either. The claim, in the pleadings and during the hearing, has been premised on the photographs being defamatory because of the photographs showing the plaintiff with a politician belonging to DMK, a rival political party to the political party to which the plaintiff belongs and because of showing the plaintiff, an elected representative of the people, in the company of a man other than her husband. However, there is not a whisper in the plaint of what is argued. In the plaint, neither has the identity of the man shown with the plaintiff in the photographs been disclosed nor is the factum of the said man belonging to the rival political party to the political party to which the plaintiff is affiliated nor of the plaintiff being married, is pleaded. It is only vaguely pleaded that the photographs are defamatory of the plaintiff and tarnish the image of the plaintiff, without disclosing how. Once the plaintiff has described herself as a politician and an elected representative of the people i.e. a public persona, mere presence of a man, even if other than the husband of

the plaintiff, alongside the plaintiff in photographs, can by no standard of a reasonable person be said to be defamatory of the plaintiff, as the plaintiff in the course of her political journey is bound to come in contact not only with women but also men. Thus, the photographs of the plaintiff, I repeat, a politician, with a man other than husband, can by any stretch of imagination be considered by any person of average intellect and moral standard, to be lowering the esteem in which the plaintiff is held or as tarnishing the image of the plaintiff. In *Pepsico India Holdings Pvt. Ltd., Patanjali Ayurved Ltd., Shilpa S. Shetty, Selvi J. Jayalalithaa* and *Kanimozhi Karunanidhi* supra relied upon by the counsel for the plaintiff the impugned content was *per se* defamatory. It cannot be so said of the photographs impugned in the suit which are *per se* not defamatory but which become defamatory owing to the man shown alongside the plaintiff therein being a political rival of the plaintiff. However, as aforesaid, there is no plea to the said effect.

(II) As discussed by me above, the photographs appear to be taken inside a house and/or in the private garden of a house. Had the photographs been morphed / fabricated, the plaintiff would have pleaded the identity of the person, described the reason for the plaintiff and the said man being together in a house, given the address of the house depicted in the photographs, pleaded that others also were present on the occasion and who had been deleted from the photographs or pleaded that the plaintiff had never met the said man or that the face of the man had been placed on the body of another man, in the photographs or that the body of the female shown in the

photographs was not hers and only her face had been added on body of some other woman or given such like particulars. The plaintiff has not pleaded any such thing. Rather, while invoking the territorial jurisdiction of this Court, it is pleaded that the house shown in the photographs was the plaintiff's residence at Delhi. The plaintiff, if the photographs were indeed morphed, would have pleaded that the man shown in the photographs had never visited the house of the plaintiff at Delhi or given the reason for his visit. In the absence of all the said particulars, the plea of the photographs being morphed, forged and fabricated is not a material one within the meaning of Order XIV Rule 1 of the Code of Civil Procedure, 1908 (CPC) to invite the framing of an issue. The argument of the counsel for the plaintiff, that the plaintiff to prove that the photographs are morphed, will examine herself and an expert has also been made at the spur of the moment inasmuch as it has not been explained how images appearing on the internet can be opined by any expert in the subject to be morphed. To my knowledge, no definite opinion can be given by any expert on the basis of the said images. Moreover, no foundation for such expert opinion has been laid and no report of any expert has been filed inspite of the suit having been instituted four years back. The stage for filing documents is long past gone and once the plaintiff has not filed any expert opinion, the counsel for the plaintiff when quizzed how the plea of the photographs being morphed will be proved, cannot make any such argument.

(III) Not only are the pleas of the photographs being morphed vague as aforesaid but the half-hearted nature thereof is also evident from

the alternative plea of the plaintiff, of the same even if genuine, being liable to be removed / blocked for the reason of being defamatory of the plaintiff and which aspect will be discussed hereunder.

(IV) I am therefore of the opinion that the claim of the plaintiff, of the photographs being morphed, forged and fabricated, does not deserve to be put to trial. Issues are not to be framed mechanically on all the pleas in the pleadings, howsoever vague and frivolous. Reference in this regard can be made to *Precision Steels Vs. Reeta Salwan* (2013) 205 DLT 695, *Kawal Sachdeva Vs. Madhu Bala Rana* 2013 SCC OnLine Del 1479, *Adarsh Kumar Puniyani Vs. Lajwanti Piplani* 2015 SCC OnLine Del 14022, *Abbott Healthcare Pvt. Ltd. Vs. Raj Kumar Prasad* (2018) 249 DLT 220, *Anil Kumar Vs. Devender Kumar* 2019 SCC OnLine Del 8782, *Bhavna Khanna Vs. Subir Tara Singh* 2019 SCC OnLine Del 6978 and *Satish Kumar Vs. Purshottam Maheshwari* MANU/DE/2741/2019. It has also been held that the Court is not required to at the cost of other deserving cases, put a suit to trial, if on the pleadings finds the plaintiff to have not laid any foundation for succeeding therein.

(V) There is another reason for which the claim of the plaintiff of the photographs being morphed, forged and fabricated does not deserve to be put to trial i.e. the reason of non-joinder of necessary parties. The plaintiff has instituted the suit only against Facebook Inc., Google LLC and YouTube LLC which are but the electronic platforms on which the photographs has been uploaded and who as per the pleas in the written statement are intermediaries / search

engine within the meaning of Section 2(1)(w) of the IT Act and of which pleas in their written statement, there is no denial neither by filing a replication nor during the hearing. For a plaintiff to succeed on a plea of morphing, forgery or fabrication of photographs, the alleged forger / fabricator or the person who has morphed the photographs, is necessary party and without the said person, no finding of the photographs being morphed, forged and fabricated can be returned. As observed in the order dated 14th January, 2019, a plaintiff cannot be permitted by a Court to fight a mock litigation i.e. by filing the suit not against the wrong doer but against those who are not interested or would not be interested in contesting the claim of the plaintiff. The grievance of morphing, forging and fabricating the photographs of the plaintiff is against the doer of such acts. It is not the case of the plaintiff that Facebook Inc., Google LLC or YouTube LLC have morphed, forged and fabricated the photographs. It is also not the case of the plaintiff that the defendant Union of India who in any case is described only as a necessary and proper party and against which no relief has been claimed, has done so.

(VI) The counsel for the plaintiff, being unable to reply to the aforesaid, during the hearing on 27th February, 2019 stated that the person who morphed, forged and fabricated the photographs was not impleaded because his/her identity was not known. Upon being reminded that the law provides a recourse thereto by impleading the unknown person as John Doe / Ashok Kumar and by seeking disclosure of identity thereof from the electronic platforms, it was stated that the steps in that regard will be taken. However the fact

remains that till the hearing on 1st April, 2019, no steps were taken. Moreover, it is not the function of the Court to make out a case for the plaintiff. It is the plaintiff / her counsel who have to, before approaching the Court, ensure that the wrong doer, relief against whom is sought or without whom the relief cannot be granted, is impleaded. It has not been so done in the present case. As aforesaid, more than four years have lapsed since the institution of the suit and the said claim would now also be barred by limitation. In fact, had the grievance of the plaintiff been that the photographs are morphed, forged and fabricated, a declaration to the said effect would have been sought and which relief has also not been sought in the plaint.

(VII) I am also of the view that ordinarily if the photographs showing the plaintiff with a man, according to the plaintiff had been morphed, forged and fabricated and the plaintiff was suing for relief on the said basis, the first person to be impleaded would have been the subject man inasmuch as it is that man only who was best in a position to comment on the genuineness of the photographs. Even if the said man had pleaded that the photographs were genuine and it was the case of the plaintiff that he was falsely pleading so, the plaintiff would have had an opportunity to cross-examine him to prove the falsity of his plea. Strangely the plaintiff instituted the suit without even impleading the said man. As aforesaid, even his identity is not pleaded in the plaint. Even when during the hearing on 27th February, 2019 it was so put to the counsel for the plaintiff, the counsel for the plaintiff fairly stated that in his opinion the plaintiff would not be wanting to implead the said man and confirmed so on 1st April, 2019,

after obtaining instructions. From the failure/refusal of the plaintiff to implead the said man as defendant to the suit, adverse inference arises against the plaintiff i.e. that the plea of the plaintiff, of the photographs showing her with the said man are morphed, forged and fabricated, is untrue and false. Once it is so, the question of putting the said issue to trial does not arise.

(VIII) Thus, from whichever way one looks at, the answer to question No.(A) above is against the plaintiff. The plaintiff has not made out a case for putting her claim, of the impugned photographs being morphed, forged and fabricated, to trial.

(IX) I now proceed to discuss the alternative plea of the plaintiff that, even if the photographs are genuine, the plaintiff is entitled to removal thereof for the reason of the same being defamatory.

(X) In this context also, question arises, whether the plaintiff alone is entitled to seek the relief of removal from an electronic platform and/or obstruction of the access thereto of a photograph showing the plaintiff with another. In my view, in a suit for removal of a photograph showing the plaintiff and another, the said another is a necessary and proper party, inasmuch as obliteration of the content affects the rights of said another also. The Court would not grant a relief affecting others without such others being before it and without hearing them. It is not the case of the plaintiff that the plaintiff had agreed to being photographed with the said man on the condition that the said photograph will not be published. It is also not the case that the photographs were surreptitiously taken without the consent of the

plaintiff. Rather, it is also not the case that the photographs are of the private life of the plaintiff. Without making out any case, the Court has been approached on the premise that any content on the internet pertaining to the plaintiff is removable at the asking of the plaintiff and which is not so as discussed herein below.

(XI) Though IT Act as enacted, to provide legal recognition for transactions carried out by means of electronic data interchanged and other means of electronic communications, which involve the use of alternatives to paper based methods of communication and storage of information and by which Facebook Inc., Google LLC and YouTube LLC are *inter alia* regulated, in Section 66A thereof provided as under:

“[66A. Punishment for sending offensive messages through communication service, etc.—Any person who sends, by means of a computer resource or a communication device,—

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device;

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation.—For the purposes of this section, terms “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.]”

and in the Information Technology (Intermediary Guidelines) Rules, 2011 provided as under:

“3. Due diligence to be observed by intermediary.—The intermediary shall observe following due diligence while discharging his duties, namely:—

(1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access-or usage of the intermediary's computer resource by any person.

(2) Such rules and regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that—

(a) belongs to another person and to which the user does not have any right to;

(b) is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;

(c) harm minors in any way;

(d) infringes any patent, trademark, copyright or other proprietary rights;

(e) violates any law for the time being in force;

(f) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature;

(g) impersonate another person;

(h) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;

(i) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.

(3) The intermediary shall not knowingly host or publish any information or shall not initiate the transmission, select the receiver of transmission, and select or modify the information contained in the transmission as specified in sub-rule (2):

provided that the following actions by an intermediary shall not amount to hosting, publishing, editing or storing of any such information as specified in sub-rule: (2) —

(a) temporary or transient or intermediate storage of information automatically within the computer resource as an intrinsic feature of such computer resource, involving no exercise of any human editorial control, for onward transmission or communication to another computer resource;

(b) removal of access to any information, data or communication link by an intermediary after such information, data or communication link comes to the actual knowledge of a person authorised by the intermediary pursuant to any order or direction as per the provisions of the Act;

(4) The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an

affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes.

(5) The Intermediary shall inform its users that in case of non-compliance with rules and regulations, user agreement and privacy policy for access or usage of intermediary computer resource, the Intermediary has the right to immediately terminate the access or usage rights of the users to the computer resource of Intermediary and remove noncompliant information.

(6) The intermediary shall strictly follow the provisions of the Act or any other laws for the time being in force.

(7) When required by lawful order, the intermediary shall provide information or any such assistance to Government Agencies who are lawfully authorised for investigative, protective, cyber security activity. The information or any such assistance shall be provided for the purpose of verification of identity, or for prevention, detection, investigation, prosecution, cyber security incidents and punishment of offences under any law for the time being in force, on a request in writing stating clearly the purpose of seeking such information or any such assistance.

(8) The intermediary shall take all reasonable measures to secure its computer resource and information contained therein following the reasonable security practices and procedures as prescribed in the Information Technology (Reasonable security practices and procedures and sensitive personal Information) Rules, 2011.

(9) The intermediary shall report cyber security incidents and also share cyber security incidents related information with the Indian Computer Emergency Response Team.

(10) The intermediary shall not knowingly deploy or install or modify the technical configuration of computer resource or become party to any such act which may change or has the potential to change

the normal course of operation of the computer resource than what it is supposed to "perform thereby circumventing any law for the time being in force:

provided that the intermediary may develop, produce, distribute or employ technological means for the sole purpose of performing the acts of securing the computer resource and information contained therein.

(11) The intermediary shall publish on its website the name of the Grievance Officer and his contact details as well as mechanism by which users or any victim who suffers as a result of access or usage of computer resource by any person in violation of rule 3 can notify their complaints against such access or usage of computer resource of the intermediary or other matters pertaining to the computer resources made available by it. The Grievance Officer shall redress the complaints within one month from the date of receipt of complaint."

but upon the vires thereof being challenged *inter alia* on the ground of penalizing speech and expression, in ***Shreya Singhal*** supra, Section 66-A was struck down in entirety, being violative of Article 19(1)(a) of the Constitution of India and not saved under Article 19(2) and Rule 3 sub-rule (4) of Intermediary Guidelines Rules supra was read down. It was further held that Section 79 as under:

"79. Exemption from liability of intermediary in certain cases.—(1) *Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.*

(2) The provisions of sub-section (1) shall apply if—

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not—

(i) initiate the transmission,

*(ii) select the receiver of the transmission,
and*

*(iii) select or modify the information
contained in the transmission;*

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if—

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation.—For the purposes of this section, the expression “third party information” means any information dealt with by an intermediary in his capacity as an intermediary.”

also has to be read down, to mean that an intermediary is not entitled to the protection under Section 79(1) only if, upon receiving actual knowledge from a Court order or on being notified by the appropriate Government or its agency, that unlawful acts relatable to Article 19(2) are going to be committed, then fails to expeditiously

remove or disable access to such material. It thus follows that merely because any information on the internet is offensive or causes annoyance, inconvenience, danger etc. to a person does not entitle that person to call upon the intermediary to remove that information/content or to disable access thereto and the intermediary is not liable to do so. It further follows that such a person is required to either approach the designated governmental agency or the Court for issuance of such a direction to the intermediary and the Court will issue such a direction only if the person concerned makes out a case of the information being actionable in law and not merely because the information may be an irritant without being actionable in law.

(XII) The plaintiff has sought order from this Court for removal of the impugned photographs alleging that the unlawful act of defamation is thereby committed against the plaintiff. What thus falls for consideration is, whether on the contents of the plaint, a case of defamation is made out.

(XIII) As aforesaid, the plaintiff in the plaint has not disclosed, as to how the photographs showing her with another man, even if inside the house or a garden of the house, tarnish her image or are defamatory of her, particularly considering that the plaintiff is a politician and an elected representative of the people and who in a daily routine is bound to meet men as well as women including in her house and also at times break-bread with them. Rather, photographs of politicians eating with public including persons from the disadvantaged strata of the society, are the order of the day, to build a connect with the

classes. It is only during the hearing that the reason why the said photographs are perceived to be tarnishing her, image and defaming her have been disclosed i.e. of the plaintiff being married to another man and the man shown in the photographs belonging to a rival political party. However, the said disclosure during the hearing cannot take the place of a pleading and thus it has but to be held that the plea of defamation, in the context and facts concerning the plaintiff, is vague and without any particulars. Once it is so, again the Court is not compelled to put the same to trial.

(XIV) However, even if what is disclosed in the arguments were to be considered, the photographs cannot be said to be violating the privacy of the plaintiff or defamatory of the plaintiff.

(XV) ***R. Rajagopal*** supra cited by the counsel for the plaintiff himself holds, that (i) public figures like public officials often play an influential role in ordering society; (ii) as a class, the public figures have, as the public officers have, access to mass-media communication, both to influence the policy and to counter-criticism of their views and activities; (iii) a citizen has a legitimate and substantial interest in the conduct of such persons and the freedom of press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events; (iv) freedom of press flows from the freedom of speech and expression guaranteed by Article 19(1)(a); but the said right is subject to reasonable restrictions placed thereon by an existing law or a law made after the commencement of the Constitution in the interest of or in relation to

several matters set out therein; (v) decency and defamation are two of the grounds mentioned in Article 19(2); law of torts providing for damages for invasion of the right to privacy and defamation and Section 499/500 of Indian Penal Code are the existing law saved under Article 19(2); (vi) what is called for is a proper balancing of the freedom of press and the said laws consistent with the democratic way of life ordained by the Constitution; and, (vii) over the last few decades, constant vigilance over exercise of governmental power by the press and the media is the demand of the day; it is essential for a good Government.

(XVI) In this context mention may also be made of:

(A) ***Khushwant Singh Vs. Maneka Gandhi*** AIR 2002 Delhi 58—A Division Bench of this Court in this case was concerned with balancing of competing interest of a well-known author to publish his autobiography where reference has been made to personal life of a public figure and the public figure's claim for protection against such publication under her rights of privacy. It was held, that the freedom of press extends to engaging any inhibited debate about the involvement of public figures in public issues and comments; that a close and microscopic examination of the private lives of public men is a natural consequence of holding of public offices; 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; that what a person holding public office does within the four walls of his house

does not totally remain a private matter; however the scrutiny of public figures by media should not also reach a stage where it amounts to harassment of public figures and their family members—they must be permitted to live and lead their life in peace; but the public gaze cannot be avoided, which is necessary corollary of their holding public offices; persons holding public office have to show greater tolerance for comments and criticism; they must not be thin skinned in 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; even what may be the private lives of the public figures, become matters of public interest; the two competing interests have to be balanced.

(B) ***People's Union for Civil Liberties Vs. Union of India*** (2003) 4 SCC 399 holds (i) that right to participate in the affairs of the polity of the country, by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes; (ii) that disinformation, misinformation, non-information, all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce; (iii) that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration; (iv) 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; none can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical; (v) that position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy—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; (vi) that the right of a voter to know the biodata of a candidate is the foundation of democracy; (vii) that the old dictum – let the people have the truth and the freedom to discuss it and all will go well with the Government – should prevail; (viii) that voters’ fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law; a voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution; members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them; (ix) that the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(a); (x) that the right to information so evolved by the Court is qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media; and, (xi) that the right to

information of the voter/citizen is enforced against an individual who intends to become a public figure and the information relates to his personal matters.

(C) *Indu Jain Vs. Forbes Incorporated*

MANU/DE/9527/2007, holding (i) that being photographed in a public street is taken to be one of the ordinary incidents of living in a free community, the real issue was whether publicising the content of the photograph would be offensive; the balance in such a case has to be arrived at between the public right to information and whether it would justify dissemination or publication or photograph taken covertly and without authorisation; (ii) that once the information is identified as 'private', the Courts are required to balance the claimant's interest in keeping the information private against the countervailing interest of the recipient in publishing it; (iii) that a public figure who makes very public a statement about a matter in respect of which even a public figure would ordinarily be entitled to privacy would be attracting or seeking publicity and it would be in public interest to show the said statement, if false, to be false; (iv) that a public figure though is entitled to have his privacy respected but should recognise that because of his public position he has to expect and accept that his or her actions would be more closely scrutinised by the media; (v) that conduct which, in the case of a private individual, would not be the appropriate subject of comment, would be the proper subject of comment in the case of a public figure; such a person

might be a legitimate subject of public attention whether or not he had quoted publicity; (vi) that in drawing up a balance sheet between the respective interests of the parties, courts should not act as censors or arbiters of taste—this is the task of others; if there is not a sufficient case for restraining publication the fact that a more lurid approach will be adopted by the publication than the Court would regard as acceptable is not relevant; (vii) that if the contents of the publication are untrue the law of defamation provides prohibition; (viii) that newsworthiness has been defined broadly to include not only the matters of public policy, but any matter of public concern, including the accomplishments, everyday lives and humanity involvements of famous people; and, (ix) however, if the publicity is so offensive as to constitute a sensational preying into private lives for its own sake, it serves no legitimate public interest and is not deserving of its protection. In the facts of that case injunction was refused.

(D) *CPIO, Supreme Court of India Vs. Subhash Chandra Agarwal* (2009) 162 DLT 135, holds (i) that a private citizen's privacy right is undoubtedly of the same nature and character as that of a public servant; (ii) that yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them; (iii) that the character of protection, afforded to the two classes—public servants and private individuals, is to be viewed from this perspective; (iv) that the nature of restriction on the right to

privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake; and, (v) that if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, by way of objective material or evidence, furnished by the information seeker, the protection afforded may not be available.

(E) ***India TV Independent News Service Pvt. Ltd. Vs. Yashraj Films Pvt. Ltd.*** 192 (2012) DLT 502 (DB), holding that the law pertaining to privilege, privacy and libel would guide us that for public figures even their personal affairs could be a matter of public interest and as against common citizens, weaker defences are available to public figures and celebrities in relation to their personal affairs.

(F) ***Nirmaljit Singh Narula Vs. Yashwant Singh*** MANU/DE/4341/2012, holding that the plaintiff in that case, who claimed himself to be a 'Baba' and Spiritual Guide and through his Samagams and telecast of his discourses through various T.V. Channels, like public figures is under a constant public and media gaze, should not be sensitive and rather should be open to criticism and scrutiny; the filing of defamation suit though a right of the plaintiff could not be allowed to become a lethal weapon in sabotaging the freedom of the press. It was however also held that it takes years and

decades to build reputation or goodwill but any irresponsible act on the part of the media can result in ruining the image and reputation of such person which may cause incalculable and irreversible damage to the prestige and reputation of such a person; if such people commit any unduly act or indulge into any nefarious or illegal activity or do not maintain self restrain or commit any act demeaning their position and status, then later on they cannot complain that they stand defamed, disreputed or ridiculed; the media is watching them 24X7 as they owe a duty to the society to expose such people indulging into illegal, immoral, unruly acts.

(G) ***Pushp Sharma Vs. D.B. Corp. Ltd.*** 2018 SCC OnLine Del 11537, holding (i) that though the new age media, especially the electronic media and internet, posts greater challenges, that *per se* ought not to dilute valuable right of free speech which is the lifeblood of democracy; (ii) that the salutary and established principle in issues that concerned free speech are that public figures and public institutions have to fulfil a very high threshold to seek injunctive relief in respect of alleged libel or defamation; (iii) that those who fill public positions must not be too thin-skinned in respect of references made upon them; and, (iv) that the mere frame of the relief—of permanent injunction does not alter the principle; the cause of action on which the plaintiffs based their suit being alleged defamation, the ordinary principles of injunctive relief, having

regard to the nature of the subject matter i.e. restraint of speech, would be the same.

(H) *Sunil Sachdeva Vs. Owner of Domain Name WWW.CJR7.Com* 2019 SCC OnLine Del 11168, where myself, on a conspectus of numerous precedents, concluded (i) that one's right to know may invade another's right to privacy and breach of confidentiality; (ii) that the former right has to be harmonized with the need for personal privacy, confidentiality of information and effective governance; (iii) that the two rights have to be balanced and distinction was made between "something which is of interest to the public" and "something which is in public interest"; and, (iv) that public may be interested in private matters with which the public may have no concern and need to know; however such interest of the public in private matters would repudiate and directly traverse the protection of privacy and there is a right to shield oneself from unwarranted access to one's personal information and to protect facets of reputation, honor etc. associated with the right to privacy.

(I) *Supreme Court of India Vs. Subhash Chandra Agarwal* 2019 SCC OnLine SC 1459, holding that (i) public interest, sometimes criticised as inherently amorphous and incapable of a precise definition, is a time tested and historical conflict of rights test which is often applied in the right to information legislation to balance right to access and protection of the

conflicting right to deny access; (ii) comparison or balancing exercise of competing public interests and privacy rights has to be undertaken; and, (iii) right of the public to information on the assets of the Judges of the Supreme Court was held to not impinge upon the right to privacy of the Judges.

(XVII) As would follow on the conspectus of the aforesaid case law, this Court is required to balance the right claimed by the plaintiff of privacy qua whom she meets at her residence, has to be balanced with the right of the public to know the identity of the person whom the plaintiff meets and hobnobs with, behind closed doors.

(XVIII) Considering the fact that the plaintiff is a politician, participating in the electoral process and is a representative of the people, the people and/or the electorate certainly have a right to know that the plaintiff behind closed doors meets and hobnobs a man to whom she is not married and particularly a man who belongs to a political party which is a rival of political party to which the plaintiff belongs. The plaintiff, as a representative of people and whether performing executive function or functions as a Legislator, would be issuing orders / directions and/or participate in law making, regulating the conduct of human beings and in the said context the electorate has a right to know of the behind curtains meetings of the plaintiff with a man other than her husband and particularly a man belonging to a political party which the plaintiff, before the public criticises or opposes in the elections. If such meetings with member of a rival political party, which the plaintiff wants to remain hidden from the

public, are not of interest to the public for the purposes of maintaining purity of administration and law making, little else would qualify as of public interest. The plaintiff, of course cannot be permitted to publically oppose and criticise a political party to whose members she is otherwise close. Or, at least public has an interest in knowing the true state of affairs. For the said balancing act, no trial is required, particularly when the plaintiff, in the plaint, has not even pleaded what was argued on 27th February, 2019.

(XIX) Thus, in the facts of the present case, the public interest in knowing the meeting of the plaintiff at her residence with a man belonging to a rival political party far outweigh the private interest of the plaintiff of keeping the same hidden from public eyes. The plaintiff has not pleaded the public interest in her said meetings and/or in keeping the same hidden.

24. Thus, the suit as framed and as argued is not found to contain any material plea on trial whereof the plaintiff may be found to be entitled to the reliefs claimed. The plaintiff, as aforesaid, is not found entitled to any order against Facebook Inc., Google LLC and YouTube LLC to remove the photographs and/or to block access to them. Once it is so, the suit must fail and is dismissed with costs payable equally to Facebook Inc. on the one hand and Google LLC and YouTube LLC together on the other hand, of Rs.2 lacs each.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JUNE 02, 2020/‘bs’