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O.A.No.276 of 2023
in C.S.No.64 of 2023

<i>Reserved on</i>	<i>20.04.2023</i>
<i>Delivered on</i>	<i>.04.2023</i>

K.KUMARESH BABU, J.

This application has been filed seeking an interim injunction restraining the respondents or any one claiming through or under them from in any manner displaying the order dated 01.03.2022 passed by this Court in CrI.O.P.No.24404 of 2016 on their websites and or permitting access to the same via a search engine, pending disposal of the suit.

2.Heard Mr.Sivanandaraj, learned Senior Counsel for Mr.Roshan Balasubramanian and Mr.G.Balasubramanian, learned counsel for the first respondent and Mr.Thiyambak J. Kannan, learned counsel for the second respondent.

3.This Court had recorded service of notice as being completed the application in respect of the third respondent based upon an email sent by the learned counsel for the applicant/plaintiff to the email from which he had received a reply to his notice. However, there is no representation on behalf of the third respondent.



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4.Mr.Sivanandaraj, learned Senior Counsel would submit that the applicant is a Senior Professional in the Telecom Industry and was recognized as a Young Global Leader in 2021 by the World Economic Forum. He would further submit that the applicant was married in the year 2012 in Chennai and thereafter, the applicant moved to the United Kingdom along with his wife and has been living there eking out his livelihood working with BT Group. While so, his wife had filed an application for divorce before the Family Court at Brentford in United Kingdom which had granted final decree of divorce on 01.12.2016.

5.In the interregnum, the applicant's wife had filed a complaint before All Women Police Station, Adyar on 05.10.2016 under Section 498(A) of I.P.C. and Section 4 of the Dowry Prohibition Act, 1961 which was registered as Crime No.4 of 2016 against the applicant and his parents. The applicant and his parents had approached this Court seeking to quash the complaint in CrI.O.P.No.24404 of 2016. This Court by order dated 01.03.2022 had quashed the FIR in respect of his parents and dismissed the claim of the applicant and directed the Police to complete the investigation. The Police after detailed investigation had filed a Closure Report indicating that the said complaint had been filed without any substantial material and seems to have been filed only to



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6.He would submit that the order passed in CrI.O.P.No.24404 of 2016 had been uploaded in the website of this Court and the third respondent had taken the order and had published in its website. The applicant had submitted his resignation with BT Group by email dated 14.11.2022 which was widely published on the internet. He had also been offered an appointment as Chief Technology Information Officer at a reputed private company named Orange Business Services India Solutions Pvt. Ltd. All of a sudden, the order passed by this Court started to be widely circulated in the Social Media Platform including his Professional circles. On verification, the applicant had come to know that the order uploaded by the third respondent website is being reflected in the search engine that has been operated by the respondents 1 and 2.

7.He would further submit that the publication is causing severe damage to his reputation. As the order of this Court had extracted the allegations made by the wife which are unsustainable and unfound and after thorough investigation has been found to be false by the Investigating Agency. He would submit that the availability of the order in the website of the respondent affects his fundamental right to privacy and right to be let alone. Immediately on coming to know about the same, the applicant had sent legal notices to the respondents and had received an automated reply from the first respondent as such the email has being acknowledged and thereafter no further action had



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being taken place, the second respondent refused the request stating that they cannot de-index the Order, in the absence of an appropriate Court Order. The third respondent refused to remove the same stating “Sorry it is a criminal case and nothing can be done as per our website policy [https://indiankanoon.org/court case online.html](https://indiankanoon.org/court_case_online.html)”. Hence the applicant/plaintiff has filed this application seeking for an interim injunction restraining the respondents from any manner in displaying the order dated 01.03.2022 passed by this Hon’ble court in Crl.O.P No.24404 of 2016 on their websites and permitting access to the same via a search engine, pending disposal of the suit.

8.Learned Senior Counsel had relied upon following judgment to substantiate his claim and had sought for interim order as prayed for.

(a) P.Surendran vs State By Inspector of Police reported in 2019 (9) SCC 154.

(b) Vysakh K.G. & Ors. vs. Union of India and Ors. reported in MANU/KE/3657/2022.

(c) XXXX vs. YYYY and Others reported in 2022 SCC OnLine SC 1123.

(d) M.Siddiq (Dead) vs. Mahant Suresh Das and Others reported in (2020) 1 SCC 1.



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(e) Dalpat Kumar and Another vs. Prahlad Singh and Others reported in (1992) 1 SCC 719.

(f) Union Carbide Corporation vs. Union of India reported in 1988 M.P.L.J. Pg. 540.

(g) Justice K.S.Puttaswamy (Retd). And Another vs. Union of India and Others reported in (2017) 10 SCC.

(h) Smt. Ganga Bai vs. Vijay Kumar and Others reported in (1974) 2 SCC 393.

(i) Sardar Amarjit Singh Kalra (Dead) and Others vs. Pramod Gupta (Smt.) Dead. reported in (2003) 3 SCC 272.

(j) Karthick Theodore vs. The Registrar General, Madras High Court, Chennai and 3 Others dated 03.08.2021 in W.P.(MD)No.12015 of 2021.

(k) Sri.Vasunathan vs. The Registrar General, High Court of Karnataka, Bengaluru and 4 others reported in 2017 SCC OnLine Kar 424.

(l) Jorawer Singh Mundy vs. Union of India and others reported in 2021 SCC OnLine Del 2306.

(m) Chief Information Commissioner vs. High Court of Gujarat and Another reported in (2020) 4 SCC 702.

(n) R.Rajagopal alias R.R.Gopal and Another reported in (1994) 6 SCC 632.



(o) P.Surendran vs. State by Inspector of Police reported in (2019) 9

SCC 154.

(p) R.Mathiazhagan and 2 others vs. P.J.Ethiraj and 2 others dated

09.11.2021 in A.No.23 of 2020.

9.Mr.G.Balasubramanian, learned counsel for the first respondent would submit that the first respondent is a company incorporated under the laws of the United States of America, which owns and operates a search service that is available on the website www.google.com and country-specific local domains such as www.google.co.in. It is the further submission of the respondent that they are not the publisher of the alleged content, such content is only authored and published by independent third-party websites. Google search performs the task of indexing information which is already available on third-party websites, when a user enters a query, the google algorithm searches the index for matching pages and returns appropriate search results and a user is redirected to third party websites where the content is hosted or appears. The content is not created, modified or controlled by the first respondent; it is done by the respective owners of the third party websites.

10.He further submit that the Information Technology (Intermediary

<https://www.mhc.tn.gov.in> Guidelines and Digital Media Ethics Code) Rules 2021 viz., Rule 3(1)(e) as



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well as the the erstwhile Rules of 2011 categorically recognize and exempt such transient and incidental storage from the ambit of “publishing” or “hoisting”. The 2021 Rules clearly recognize that there is a clear distinction between intermediaries such as the first respondent and publishers of the content. It is affirmed that the first respondent's search engine resembles a library index which records the location of the books available in the library without being responsible for the content in such books.

11.He would submit that the first respondent falls under the definition of an “intermediary” under the Section 2(1)(w) of the Information Technology Act, 2000 under Section 79(3)(b) of the IT Act confers exemption from liability to intermediaries for unlawful acts of any third-parties, an intermediary shall remove or disable access to any unlawful, if notified by appropriate Government or its agency or, upon receiving actual knowledge. On the basis of the principle of right to be forgotten the applicant cannot seek removal of the order from the website. Therefore, the application filed by the applicant is liable to be dismissed.

12.Learned counsel for the first respondent has relied upon a judgment in ***R.Rajagopa @ R.R.Gopal and another vs. State of T.N. and others*** reported in ***(1994) 6 SCC 632.***



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13.Mr.Thiyambak J. Kannan, learned counsel for the second respondent would submit that the applicant had issued a legal notice dated 06.03.2023 to the second respondent/second defendant, seeking to remove the order dated 01.03.2022 passed by this Court in Crl.OP.No.24404 of 2016, which extracts certain allegations made by his ex-wife against him and his family. A reply was given by this respondent clarifying that Microsoft Ireland Operations Limited (MIOL) was responsible for the operation of the search engine “Bing” operated from the URL “bing.com”, in India. The clarifications was that in terms of Microsoft Bing's Policy, MIOL will require a Court Order directing the specific URL(s) of the objectionable/defamatory content to be de-indexed from Microsoft Bing and our website is not a content hosting platform and has no control over the data uploaded and published on third party web pages.

14.He would further submit that the second respondent is not responsible for the operations of Microsoft Bing, even if directions are passed by this Court it cannot take any measures to remove the content from the search engine.

15.I have considered the respective arguments made by the counsel appearing on either side and perused the materials available on record.



16.The claim of the applicant is that the availability of the order in the third respondent website is causing grave prejudice to him as the same has also been easily accessed by any third party through the search engine of the respondents 1 and 2.

17.Various judgments have been relied upon by the learned Senior Counsel appearing for the applicant, I do not propose to venture into the judgment relied upon by the learned Senior Counsel for the present. It is true that the reputation of an individual cannot be brought down based upon false and frivolous allegations. In this case, the allegations made by the applicant's wife have been found to be untrue by the respective Investigating Agency. The third respondent runs a website in which various orders of the Courts are being hoisted periodically. What the third respondent had done is hoisted the orders passed in CrI.O.P.No.24404 of 2016 filed by the applicant, the hoisting of orders by the third respondent is for the benefit of legal practitioners and also for the public at large to ascertain law on a particular subject. When the orders are being hoisted in the website, it is imperative that the facts of the case would also reflect in the said orders in that context, I am of the view that the third respondent cannot be directed to remove the said judgment from its website.

But in the interest of justice in this particular case, the third respondent can be directed to mask the name of the parties in the judgment particularly in



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Crl.O.P.No.24404 of 2016, this would sub serve the interest of the applicant for the present. The other issues can be left open in the suit to be decided at the final hearing of the suit. If the name of the parties are masked as directed above, the search engine of the respondents 1 and 2 would not pick up the order and to be displayed while any search is made in respect of the applicant. Therefore, this Court directs the third respondent to mask the name of the parties particularly the applicant name in the order made in Crl.O.P.No.24404 of 2016 hoisted in their website forthwith.

18. With the aforesaid direction, the application is disposed of.

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Pre-delivery order in
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