
(1986) 11 KAR CK 0020
In the Karnataka High Court
Case No : M.F.A. No. 2241 of 1986

A.K. Subbaiah

APPELLANT

Vs

B.N. Garudachar

RESPONDENT

Date of Decision : 26-11-1986

Acts Referred:

Constitution of India, 1950 — Article 19, 19 (1), 19 (2), 361A

Citation : (1987) ILR (Kar) 100

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; Udaya Holla, for the Respondent

Final Decision : Dismissed

Judgement

Kulkarni, J.—Both the advocates submitted that the appeal itself may be disposed of on final merits. Accordingly, arguments on the final merits of the appeal are heard and the appeal is disposed of finally.

2. This is an appeal by defendant-5 against the order dated 12-8-1986 passed by the XI Additional City Civil Judge, Metropolitan Area, Bangalore City, in O.S. No. 2055 of 1986, allowing I.A.No. 1 filed by the plaintiff under Order 39 Rules 1 and 2 C.P.C.

3. The plaintiff filed the suit alleging that defendant-5 had made on the floor of the House a defamatory statement and that even thereafter he has been persisting in making public statements impeaching the character, integrity and honesty of the plaintiff. Hence he filed the suit seeking an injunction restraining the defendant No. 5 from making defamatory statements.

4 The suit was resisted by defendant-5.

5. The plaintiff filed I.A. No. 1 under Order 39 Rules 1 and 2 C.P.C. It was also resisted by defendant-5.

6. The trial Court on circumspection of the material, granted the temporary

injunction. Hence the appeal.

7. That a statement similar to the one found in Hindustan Times Weekly, Sunday, March 16, 1986, was made by defendant-5 on the floor of the House while he was a M.L.C., is not disputed before me. That statement published in Hindustan Times Weekly, Sunday, March 16, 1986, in material particulars, reads as :-

"He told this reporter yesterday evening that the police officer's sister living in Rayarkoppal village of Alur taluk in Hassan District arranges jobs transfers and postings in the police Department. Her accomplice is her husband, Narasimha Iyengar. Money collected in the deals are shared, one share going to the Chief Minister's wife herself."

So, the statement contained in Hindustan Times Weekly, Sunday, March 16, 1986, itself goes to show that the said statement has been published in the Hindustan Times Weekly on account of defendant-5 telling the reporter of the said paper about it the previous day. So, the publication in the said Hindustan Times Weekly cannot be said to be the statement made by defendant-5, on the floor of the House. It is a statement made by him outside the House.

8. It is clearly stated in paras 15 and 16 of the plaint that defendant-5 has been making public statements even in public places and outside the House impeaching the character, honesty and integrity of the plaintiff. The allegations made in para 16 of the plaint read as :-

"The plaintiff submits that the 5th defendant herein is planning to publish some more false and defamatory statements in the news papers with a view to harassing the plaintiff and tarnishing the plaintiff's reputation and thereby cause mental agony to the plaintiff. Such further defamatory statements by the 5th defendant will cause further irreparable injury and damage to the plaintiff. The 5th defendant has no right whatsoever under law to make defamatory and malicious statements about the plaintiff herein."

This is not denied specifically by defendant-5 in the written statement. The learned Counsel Shri Ravivarma Kumar for defendant-5 submitted that defendant-5 would make speeches attributing corrupt practices to the plaintiff. According to him, justification or truth would be his defence. Therefore it becomes clear that defendant-5 is going to make statements impeaching the character, integrity and honesty of the plaintiff, even in public places.

9. According to the learned Counsel Shri Ravivarma Kumar, his client has got a fundamental right under Article 19 of the Constitution of India to freedom of speech and expression. The freedom of speech and expression guaranteed under Article 19 is not an absolute and unlimited one. Merely because one has got right to freedom of speech and expression, it does not mean that one can go on talking anything about another. The right is always controlled by some corresponding duty.

10. A similar question arose in K.V. Ramaniah Vs. Special Public Prosecutor, the

Andhra Pradesh High Court has stated as:-

"It is therefore impossible to accept the argument of the Learned Counsel for the revision petitioners that freedom of speech in Article 19(1) must be taken to mean absolute freedom to say or write whatever a person chooses recklessly and without regard to any person's honour and reputation. The right guaranteed by the Constitution, it must be borne in mind, is to all the citizens alike. The right is one certainly has a corresponding duty to the other and judged in that manner also, the right guaranteed cannot but be a qualified one. Indeed the right has its own natural limitation. Reasonably limited alone, it is an inestimable privilege. Without such limitations it is bound to be a scourge to the Republic.

"The American Jurists and Judges, as already discussed, have long understood the natural limitations and the evils of absolute unabridged freedom of speech and expression. Though the 1st and 14th amendments declare in clear terms that no law shall abridge the freedom of speech or of the press, this right having regard to its natural limitations, has invariably been construed to mean a qualified right and for this purpose the doctrine such as doctrine of danger, present and clear, or of substantial evil sufficient to justify impairment of the right, have been invoked to place that right within limits. Our constitution framers taking benefit of the experience in America have in terms provided the necessary qualifications to this right. Article 19(2) in this behalf contains safeguards of reasonable restrictions on the exercise of the right."

11. Article 19(2) relied on by the learned Counsel Shri Ravivarma Kumar does not in any way help him. But, on the other hand, it goes to show that the freedom of speech and expression guaranteed under Article 19 is controlled by reasonable restrictions and limitations and by a collateral duty which one owes to another. Article 19(2) of the Constitution of India reads as :-

"Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court defamation or incitement to an offence.""

(underlining is mine)

So long as the speech made by a person is not defamatory and does not amount an incitement to commit an offence and so long as it does not violate the limits of decency or morality, one would be justified in claiming freedom of speech and expression. When once the speech or statement made by a person amounts to violation of decency or morality or becomes defamatory etc., his right to freedom of speech and expression would be naturally controlled by corresponding duty he owes to another. Therefore Article 19(2) puts a reasonable restriction on the freedom of speech and expression. Nobody has got a right to make a defamatory statement regarding another merely on the ground that the law provides truth or

justification as a defence. The plea of justification would come into picture only after speech is made but not before. The reputation is most valuable to any person. It is much more valuable than any amount of money or anything else in the world. Therefore merely because defendant-5 wants to plead truth or justification, it does not mean that he has got an unfettered right to freedom of speech and expression. Therefore the argument of the learned Counsel Shri Ravivarma Kumar that his client has got an unfettered freedom of speech and expression, only merits to be rejected.

12. His next argument is that it is only the law that can put reasonable restriction and that so long as the law does not put any restriction on the freedom of speech and expression, he is entitled to speak out anything that he likes. After all the law of defamation is contained in the law of Torts and in the Indian Penal Code. What would amount to defamation under the criminal law, is well laid down in the Indian Penal Code. What would amount to defamation, is well settled by the law of Torts. Even assuming that his argument has got some force, the law regarding the defamation and the law safeguarding the reputation of another, is well laid down by both the civil law as well as the criminal law. Therefore his argument does not appeal to me in the least.

13. He then next urged that the statement published in the Hindustan Times Weekly was a reproduction of what he had stated on the floor of the House and therefore he was protected by Article 361A of the Constitution of India. Article 361A of the Constitution of India reads as:-

"Protection of publication of proceedings of Parliament and State Legislatures :

(1) No person shall be liable to any proceedings, civil or criminal, in any Court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice;

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper."

So far as the absolute privilege contemplated by Article 361A is concerned, it applies to the statements made on the floor of the House. Nobody has got a right to challenge in any way the statement made by a Member of the House on the floor of the House. No action can be taken against him regarding the statement made by a Member of the House in the House. The privilege does not extend at all to the utterances made outside the House, Under the guise of that privilege,

he cannot even repeat outside the House the statement which he has made on the floor of the House. The umbrella of protection is available to him only in respect of the speeches made in the House. Once he comes out of the four walls of the House, the privilege ceases and he would be entitled to only that much freedom of expression to which any other citizen of the Country is entitled. The said privilege has been created by Article 361A in order to see that a Member can express his opinion in the House in a fearless manner. But that does not extend to the statement made by him beyond the four walls of the House.

14. In Halsbury's Laws of England, Third Edition, Vol. 24, on pages 52 and 53, it is stated as :--

"Proceedings in Parliament : Words spoken by a member of Parliament in Parliament are absolutely privileged, and the Court has no jurisdiction to entertain an action in respect of them. When Parliament is sitting and statements are made in either House, the member making them is not amenable to the civil or criminal law, though the statements are false to his knowledge, and a conspiracy to make such statements would not make the members guilty of it amenable to the criminal law. This privilege, however, does not extend to a statement published by a member outside the House, though it is a reproduction of what was said in the House, and made in consequence of the appearance of an incorrect publication in the newspapers; and a letter from a member to a minister, even though on a matter of public concern, is probably not entitled to this absolute privilege."

15. Shri Ravivarma Kumar then drew support from Article 194 of the Constitution of India. It is in pari materia with what is contained in Articles 19(1), (2) and (3) and 361A of the Constitution of India. Article 194 only repeats that a member of a House has got freedom of speech in the Legislature of every State and that no member of the Legislature shall be liable to any proceedings in any Court in respect of anything stated or done on the floor of the House. Therefore Article 194 does not cover the statements or speeches made outside the four walls of the House. There does not appear to be any provision in the Constitution protecting a member of the House from the law of defamation in respect of the statements or speeches made outside the House.

16. The Supreme Court in Dr. Jatish Chandra Ghosh Vs. Hari Sadhan Mukherjee and Others, considered the scope of Article 194 and held that there is no absolute privilege in favour of a member of the Legislature in respect of a publication of a question at the instance of the member who had sought to put it in the House, but was disallowed by the Speaker, when that question contains defamatory imputations regarding the character of a person. The said principle is clearly an authority for the proposition that a member has got an absolute privilege so long as he talks or delivers a speech within the four walls of the House. It is an authority for the proposition that a member has no privilege in respect of a statement made by him outside the House simply on the ground that he is a chosen member of the House.

17. As already indicated above, merely because the law recognises award of damages for defamation, it does not entitle any person or even a member of the House to make a defamatory statement outside the House regarding any one else. The reputation is the most valuable property one can have during his life time. The reputation cannot be measured in terms of money at all.

18. The Madhya Pradesh High Court in Hari Shankar Vs. Kailash Narayan and Others, Has stated in para 4 as :--

"After hearing the arguments on both sides, I am of the view that the order passed by the Learned Appellate Court should be set aside and that of the Learned Trial Court should

be restored. The reasoning of the appellate Court that the reputation can be compensated by paying him damages in terms of money is not easy to accept. Secondly, if the reputation of a respectable citizen can be measured in terms of money, then, it will amount to issue of a license against a citizen and asking him to take money as compensation for the injury, he has suffered to his reputation."

19. The learned Counsel Shri Ravivarma Kumar stated that the Court has no jurisdiction to issue a temporary injunction restraining a person from making statement which, according to the plaintiff, would be defamatory. This aspect has been considered by the Madhya Pradesh High Court in para 7. It reads as :--

"Jurisdiction to grant injunctions in matters of libel and slander. Prior to the Specific Relief Act in India, the Bombay High Court held that no injunction will be granted to restrain the publication of a libel and that an individual is not entitled to protection by way of injunction against the act of a corporation though in excess of their powers which affects the individual's character and reputation, whether private, professional or commercial, which he could not have been entitled to, had the act complained of been committed by an individual defendant, on the ground that the act in question was one which the corporation had no power to do under the deed of the incorporation. The law has been changed by the enactment of the Specific Relief Act in 1877 (now replaced by Act 47 of 1963). So, now, the Court may grant an injunction to restrain the publication of a libel even though it may be shown not to be injurious to the complainant's property. Sir James Fitz James Stephen said : "A good law of torts would be a great blessing to the country. It would enable the Legislature to curtail very greatly many of the provisions of the Penal Code, which are at present called into play on the most trifling occasions to gratify their private malice. The provision of defamation, for instance, clearly ought to belong to the law of wrongs and not to the law of crimes."

"Under Section 54 of the Specific Relief Act of 1877 a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. When the defendant threatens the publication of a statement which is punishable under Chapter XXI of the Indian Penal Code, that is a breach of obligation, though it is not a civil wrong,

the Court can grant an injunction to restrain the publication. Section 55 of the Specific Relief Act of 1877 gives the following illustrations in the law of defamation. Illustration (e) states : "A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property". Illustration (f) runs thus : "A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication." The Court will issue when necessary a mandatory injunction ordering the defamatory statements to be given up or destroyed." Therefore, considering the position of law, as mentioned above, I am of the view that the revision deserves to be allowed and the order of the Appellate Court deserves to be set aside and that of the Trial Court should be restored with costs. I am further of the view that whether the matter is defamatory as alleged by the plaintiff and whether the plaintiff is entitled for any compensation will be decided by the Trial Court finally."

Therefore the argument of the Learned Counsel Shri Ravivarma Kumar that his client is entitled to make speeches making imputations against the plaintiff, does not appeal to me in the least. It runs contrary to the provisions of law as already referred to above. No doubt, every person in our Democratic Republic, has got a freedom of speech and expression. But, however, that right is controlled by a corresponding duty which he owes to another. The rights and duties cannot be separated. Every right has got a corresponding duty. So long as one does not transgress the duty he owes to another, his right would remain unfettered. But if the speech which he wants to make results in or is likely to result in an injury to another, that right stands controlled by the corresponding duty which he owes to another. Merely because the law recognises the truth or justification as a defence, it does not give him a right to speak anything he likes it is no doubt true that one has got a right to expose corrupt practices found in the society. But there are methods and ways by which one can expose them. But if in the guise of exposing corrupt practices a person makes statements which are per se defamatory, he cannot be excused on the ground that he might take up the plea of justification or truth later on.

20. In this case, it is stated clearly by the plaintiff in the plaint that defendant 5 has made the statement accusing that he is corrupt. It is also stated in the plaint that defendant-5 is persisting in making such speeches affecting his character, integrity and honesty. The allegation contained in para 16 of the plaint that defendant-5 is going to make such statement, is not denied by defendant-5. On the other hand, the learned Counsel Shri Ravivarma Kumar for defendant-5 submitted that his client would make such statements. If it is so, then it clearly follows that a temporary injunction must issue in the present case and the trial Court has rightly issued the temporary injunction in this case.

21. Therefore, under these circumstances, the conclusion of the trial Court that

the plaintiff has made out a prima facie case needs no interference at all.

22. Then the next question is one of balance of convenience. Everybody has got a right to protect his reputation and character. The very story of defendant-5 that he wants to make speeches of similar type, indicates that if the injunction is not granted, irreparable injury would be caused to the plaintiff under the circumstances. Therefore the balance of convenience is in favour of the plaintiff. There is no balance of convenience at all in favour of defendant-5, under the circumstances.

23. The learned Counsel Shri Ravivarma Kumar referred me to para 168 of Halsbury's Laws of England, Fourth Edition, Vol. 28. It reads as :--

"It is well settled that no injunction will be granted if the defendant states his intention of pleading a recognised defence, unless the plaintiff can satisfy the Court that the defence will fail. This principle applies not only to the defence of justification but also to the defences of privilege, fair comment, consent, and probably any other defence. When qualified privilege or fair comment is to be pleaded, an injunction may nevertheless be granted if the plaintiff can satisfy the Court on the issue of malice."

As already stated above by me, merely because the Law allows a person to plead truth or justification as a defence, it does not give him an absolute privilege or right to speak anything about any other person. One should always be within the statutory limits. Merely because he wants to plead truth or justification later on, it does not give an unqualified right to a person to speak outside the House anything that one likes. Supposing that the plea of justification or truth which he wants to plead later on is not accepted, the damage would have been already done and the damage done cannot be undone later on. Therefore the argument of the learned Counsel Shri Ravivarma Kumar by placing reliance on the said para 168, is again qualified by certain standards of morality, decency and the provision of law.

24. Then he referred me to Fraser v. Evans and Ors. 1969 (1) All. E.R. 8. It was held in the said case as :

"The injunction must be discharged because --

(i) the plaintiff had no right to prevent publication since there was no breach of confidence as against him (see p. 11, letter F, and p. 12, letters H and I, post) ;

(ii) (per LORD DENNING, M.R.-- and WIDGERY, L.J.) the Court would not restrain the publication of an article, even

though it was defamatory, when the defendants said that they intended to plead justification or fair comment (see p. 10, letter G, and p. 12, letter I, post) ;

(iii) similarly, the Court would not restrain the publication of an article which would include short extracts from the report whilst the defendants asserted that this would constitute "fair dealing". "

According to Shri Ravivarma Kumar, the said proposition came to be laid down in view of the threatened publication of some Article or statement. It was a case where the victim was questioned with reference to it and an Article was about to be prepared. The said passage does not entirely bar the jurisdiction of the Court in granting a temporary injunction. It all depends upon the circumstances involved and available in a particular case. As already stated above, the Supreme Court decision already referred to, clearly lays down that there is no absolute privilege as contended by the Counsel for defendant-5. The law relating to the grant of temporary injunction, is contained in the provisions of the Specific Relief Act in our Country. In view of the specific provision contained in the Specific Relief Act, the said English ruling will not be of much assistance in this case.

25. Shri Holla brought to my notice that defendant-5 had not pleaded in specific terms in his written statement that he would justify his statements or that he would plead the truth. Merely because he has made references to the statements contained in Justice Kudoor's enquiry report, it does not mean that he wants to plead justification and truth as a defence. So far as the alleged corrupt practices referred to in the statement contained in the Hindustan Times Weekly are, concerned, Shri Holla contended that there was nothing specific in the written statement indicating that he wanted to plead truth or justification. The written statement though it runs into several pages, does not contain specific assertion that his plea would be one of truth or justification. If it is so and if it is judged in view of the non-denial of the allegations contained in para 16 of the plaint, it cannot be said that his plea would be one of justification or truth as contemplated by the said English decision.

26. The order passed by the Court below is well reasoned, satisfactory, logical and well supported by the legal principles. It does not suffer from any illegality or perversity.

27 Under these circumstances the order of temporary injunction issued by the Court below, does not need any interference. Hence the appeal is dismissed.