
(1982) 11 DEL CK 0023

In the Delhi High Court

Case No : Civil Revision No. 645 of 1982

Charanjit Singh

APPELLANT

Vs

Arun Purie and Others

RESPONDENT

Date of Decision : 05-11-1982

Acts Referred:

Citation : (1983) 4 DRJ 86 : (1982) 2 ILR Delhi 953 : (1983) RLR 48

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : Virender Jain, N.K. Handa, Soli J. Sorabjee, M.M. Madan and H.N. Salve, for the Appellant;

Judgement

Soltan Singh, J.

(1) In a suit for perpetual injunction filed on the 5th February, 1982 for restraining the defendants-respondent? from printing and publishing the threatened article and further restraining them from circulating for sale or otherwise the Magazine "India Today" containing the said article regarding the plaintiff, an application for temporary injunction under order 39 rules 1 and 2 of the CPC (hereinafter referred to as "the Code") was allowed by the trial Court but on appeal it was dismissed by the lower Appellate Court. Hence, this revision.under Section 115 of the Code.

(2) The plaintiff-petitioner alleges that he is a citizen of India, that he is the Managing Director of Pure Drinks (New Delhi) Ltd., that he was elected in 1980 as Member of Parliament and has very high status, associated with social, political, cultural and financial institutions, that defendant- respondent No. 7 "India Today" is a magazine of which defendant-respondent No. 1 is the Editor. Defendants-respondents 2 to 6 are the Managing Editor, Senior Editor, Correspondent and Publisher respectively of the magazine, that the defendants and vested interests were trying to throw mud on him in one way or the other, that on 21st January, 1982 defendant No. 4, a correspondent of the said

magazine wrote a letter to his Secretary requiring him to furnish answers to certain questions designed to malign, defame and to downgrade his financial, social, political and moral esteem in the eyes of the general public. He pleads that the said questionnaire is mala fide and has been framed with a view to mislead the general public and to malign and defame him, that he was not under a duty to send reply, that on 2nd February, 1982 defendant-respondent No. 3 sent another letter asking him to send his comments by 4 P.M. on 5th February, 1982 failing which the defendants threatened to print their own story about him. The plaintiff further pleads that the two letters require him to reveal his business interests/secrets to the public, that the publication of any story on the basis of the said questionnaire would defame him and cause serious damage to his reputation. He also pleads his reply to the said questionnaire dated 21st January, 1982 in para 9 of the plaint and says that the threatened article would be outside the scope of lair comment as envisaged by the freedom of press. He, Therefore, prays for the grant of a decree for perpetual injunction and for interim injunction till the decision of the suit restraining the defendants from printing and publishing the threatened article about him alleging that he has a prima facie case, that he would suffer irreparable injury and the balance of convenience is in his favor.

(3) The defendants in the written statement and reply to the application for temporary injunction besides other defenses mainly plead that it is 88 not open to the court to grant perpetual or temporary injunction against the publication of an article which is yet to be written, that any such order would be a violation of the Fundamental Rights granted under Article 19 of the Constitution and would amount to pre-censorship, that the suit is not maintainable since compensation in money would be adequate relief in the event of alleged threatened injury to the plaintiff. They admit that the letter dated 21st January, 1982 i.e. the questionnaire at his request was sent to the plaintiff as defendant No. 4, on being deputed by defendants I to 3, was intending to write an article of public interest in which the plaintiff was concerned, for publication, in the magazine "India Today", that defendant No. 4 wanted to have comments from the plaintiff on various reports/criticisms that had been raised in the past in the press and in the Parliament, that the questions merely summarised the issues forming the substance of the various criticisms, that the questions were neither to mislead the public nor to malign or defame the plaintiff, that they wished only to write a well. researched balanced article after taking into account plaintiff's views on matters of public debate and discussion. They further plead that the two letters did not contain any threat to the plaintiff, that there was nothing illegal or improper in requesting him to give his version on the questions sent to him as on his own admission he was a public figure and a Member of Parliament and his conduct has been a matter of public interest, debate and discussion both in Parliament and the Press, that they were performing public duty in the exercise of their freedom of speech and expression guaranteed to them under Article 19 of the Constitution. The defendants deny that they asked questions in the letter

dated 21st January, 1982 to harass, malign or defame the petitioner. They further states that they did not propose or threat to publish the questionnaire and intend to defend the article to be published on grounds of justification, fair comment and qualified privilege, that the suit and the application were premature and no cause of action has accrued to the plaintiff.

(4) The trial court by order dated 11th March, 1982 restrained the defendants from publishing the threatened article based on the questionnaire contained in the letter dated 21st January, 1982 or circulating the same for sale. The trial court observed that the plaintiff had a prima facie case, that the motive of the defendants was to publish article about the plaintiff under the garb of privilege of fair comment and freedom of speech guaranteed under the Constitution and that there existed danger to the reputation of the plaintiff as a political leader. On appeal, the Lower Appellate Court dismissed the application for the grant of temporary injunction.

(5) The plaintiff on 14th April, 1982 moved an application before the trial court for leave to amend the paint under Order 6 rule 17 of the Code by adding para 7A to the effect that the defendants were trying to tarnish and harm his reputation with mala fide intentions because he had stopped giving advertisements of his concerns to them for publication in their magazine "India Today". An application was also filed before the Lower Appellate Court to take into consideration the proposed amendment while deciding the appeal. The Lower Appellate Court allowed the application and considered the proposed amendment while deciding the appeal.

(6) The learned counsel for the petitioner-plaintiff submits that the Lower Appellate Court under the circumstances of the present case ought to have confirmed the temporary injunction issued by the trial court against the respondents-defendants. He says that questionnaire dated 21st January, 1982 and other documents on record specially the questions and their answers raised in the Parliament regarding the plaintiff, prima facie prove that the defendants with a view to defame him asked the questions by letter dated 21st January ,1982 and on the basis of the said questions they would publish an article in their magazine India Today" to defame him in the eyes of the general public and Therefore they should be restrained to publish the questionnaire and the article based thereon.

(7) The learned counsel for defendants submits that the plaintiff is seeking an injunction not in respect of any existing article about his public life but with respect to a non-existing article apprehending that the article when published would be defamatory. He further says that the questionnaire dated 21st January ,1982 does not malign or defame the plaintiff, that the defendants do not want to publish the questionnaire as it is but they want to write a well researched article on various questions summarised therein which have been already raised in the press and the Parliament, that the plaintiff is a public man and the defendants thought it desirable to obtain his comments on the

questionnaire before writing an article in the magazine, that the questions do not relate to the plaintiff's personal life but pertain to his public life, that the two letters dated 21st January, 1932 and 2nd February, 1982 are not threats but request to the plaintiff to give his views on the questions. He further submits that the questions raised and answered in Parliament are not prima facie defamatory as under the Rules of Procedure and Conduct of Business in Lok Sabha defamatory questions cannot be asked. He further submits that the defendants intend to defend their article to be published in the magazine India Today" on the ground of justification and fair comment.

(8) The short question is whether the defendants should be restrained from publishing an article which has not come into existence as yet and whether there is any material on record to held prima facie that the proposed article would be defamatory.

(9) Defamation is in injury to a man's reputation. The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification (Salmond on the Law of torts, 15th Edition page 179).

(10) Gatley on Libel and Slander, 8th Edition para 31 page 15 has observed as follows:

" THE gist of the torts of libel and slander is the publication of matter, usually words, conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-thinking persons generally".

(11) The essence of defamation is thus publication of a false statement concerning another person without justification. Learned counsel for the petitioner says that since 1979 the defendants have started a campaign and are having ill will and malice towards him. Reference is made by the learned counsel to the various writings about plaintiff in the various issues of the magazine "India Today" namely, (i) May 1-15, 1979, (ii) May 16-31, 1979, (iii) Jan. 1-15, 1981 and (iv) Nov. 15, 1981 and he submits that the defendants are bent upon to injure plaintiff's reputation and thus the article which the defendants would publish on the basis of the questionnaire and the said writings in the said issues would be false and defamatory. In the Issue of May I-15, 1979 of the magazine India Today" there is a photo of plaintiff Charanjit Singh with R.K. Dhawan and Mrs. Gandhi at the AICC-I "caucus" conspicuous presence" and in the article at pages 32 and 33, the plaintiff has been referred to as "Soft drinks tycoon, Gharanjit Singh". Learned counsel for the plaintiff submits that the plaintiff has been described as a member of caucus and also as soft drinks tycoon. It is not disputed that the plaintiff deals in soft drinks, his company is the manufacturer of the well known drink "Campa Cola".

(12) Learned counsel for the plaintiff submits that on or about 3rd May, 1979 the plaintiff stopped giving advertisement for publication in the said magazine of the defendants. The defendants reacted. In the issue dated May 16-31, 1979 at page I in the "Letter from the Editor". The magazine wrote as under :

" LAST fortnight ,the importance of this for India Today was brought into sharp focus. A businessman-cum-politician found the magazine's description to him in the last issue's cover Story offensive, and promptly ordered his firm to cancel their booking for colour advertising with the magazine. If India TODAY'S advertising revenue base was not so strong and widespread as it is, loss of a major national advertiser would have made a material difference and left it vulnerable to pressures of such vested interests".

(13) This writing shows that stoppage of advertisement by the plaintiff did not make any difference in the financial stability of the magazine, that it was financially strong to lace the stoppage of advertisements by the plaintiff who is a politician-cum-business man. There does not appear any word in this writing which can be said to be defamatory. Next reference to the plaintiff was made by the magazine in its Issue of January 1-15, 1981 and not prior to that. The gap of about 18 months in the two publications regarding the plaintiff will show absence of ill will or motive against the plaintiff. Had there been any motive to defame the plaintiff the Magazine would not have kept quiet during this period of 18 months.

(14) In the said issue of January 1-15, 1981 the plaintiff with his photograph at page 27 has been described as "Singh : battling for the spoils" in connection with his effort to secure control over the management of the Maruti Limited, a firm which had been very much in news in Parliament, as well as in press with business man Sagar Puri of Delhi Automobiles Limited. The article on Maruti and the plaintiff's photographs in this issue do not show any malice or grudge towards the plaintiff. There is no allegation that any portion of the article was false. The article does not appear to be defamatory. It may appear to be not in good taste. In any case no protest is 1981 under the heading "Music" at pages 129-131 under the photograph of the plaintiff the following words are written.

(15) "CAMPA Cola"s Charanjit Singh : unleashed". It appears that Osibisa music group was advertised by the plaintiff as "Osibisa Unleashed". The defendants in their article on "Osibisa" "Costly Razzle-dazzle" wrote in first paragraph of the article as follows : "Osibisa unleashed" : read the advertisement in newspapers, cinema slides, television spots and hoardings, for three weeks at a stretch. The Rs. 30 lakh media blitz, massaged in by the makers of Campa-Cola, culminated in the biggest musical razzle-dazzle that Delhi had ever witnessed. But, after being unleashed in the capital, the London-based Afro-rock band seemed to have lost most of its fiaz". Reading the article as a whole, it appears that the plaintiff advertised Caibina as Osibisa unleashed. The defendants have used the same phrase under the photo of the plaintiff. Nothing appears to be defamatory in this article.

(16) On the basis of the above references in the four issues of "India Today", the learned counsel for the plaintiff submits that malice, ill will and mala fides of the defendants towards the plaintiff are prima facie visible and Therefore the defendants should be restrained. Various references to the plaintiff in the said issues cannot be said to be defamatory specially for a public man like the plaintiff. The words used for the plaintiff in these issues may not be in good taste causing annoyance to him. A right thinking person after reading the said article and writings under the photographs of the plaintiff will not find anything adverse in regard to the plaintiff's reputation.

(17) The plaintiff admittedly is a Member of Parliament. He is a public man. In Gatley on Libel and Slander, 8th edition para 884 page 387 it is observed:

" THOSE who fill public positions must not be too thin-skined in reference to comments made upon them". "One who undertakes to fill a public office offered himself to public attack and criticism ; and it is now admitted and recognised that the public interest requires that a man's public duct shall be open to the most searching criticism".

Similar observations were made by the Supreme Court in Kartar Singh and Others Vs. The State of Punjab, reading as under :

" THOSE who fill a public position must not be too thin skinned in reference to comments made up on them. It would often happen that observations would be made upon public man which they know from the bottom of their hearts were undeserved and unjust : yet they must bear with them and submit to be misunderstood for a time" (Per Cockburn, G.J.in "Seymour v. Butterworth" (1862) 3 F 372 and see the dicta of the Judges in "R. v. Sir R. Garden", (1879)5 Qed 1. "Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though unpleasant, appendage to his office" (For Bramwell ,J., in "Kelley v. Sherlock", (1866) 1 Q.B. 686. Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give an importance to the same by prosecuting the persons responsible for the same".

In view of the above observations of the Supreme Court and in Galley on Libel and Slander it can be said that the observations made by the defendants regarding the plaintiff are not unusual.

(18) The questionnaire dated 21st January, 1982 on the basis of which plaintiff's apprehension is that defamatory article would be published in the magazine relates to the plaintiff's hotel project at Windsor Place, New Delhi regarding allotment of plot, the permission to construct the hotel allegedly in violation of rules, raising of loans, financial position of his subsidiary Mohan Ortmaan and Herbert Ltd., investigations into the alleged violations of the Companies Act by Pure Drinks (New Delhi) Ltd. misappropriation of company funds, alleged waiving of interest by Punjab & Sind Bank in regard to various firms of the plaintiff, indebtedness to Southern Bottlers (P) Ltd. regarding which the Registrar of

Companies, Punjab is alleged to have issued show cause notice for initiating winding up proceedings against the company, indebtedness to other companies, encroachment of land of Northern Railway by the firm of the plaintiff. Some of these questions were subject matter of questions and answers given in the Lok Sabha and the press. Question No. 2542 in Lok Sabha related to the Loans advanced by Government Financing Institutions to Mohan Ortmann & Herbet Ltd. On 6th March, 1981 it was answered that Loans of Rs. 127-36 lakhs and a Foreign Currency Loan of Rs. 11-46 lakhs to Mohan Ortmann & Herbat Ltd. was advanced by Industrial Development Bank of India, the Industrial Finance Corporation of India, the Industrial Credit and Investment Corporation of India and the Life Insurance Corporation of India, By question No 3010 in Lok Sabha it was asked whether the Ministry aware that the company has misappropriated its Fund by loaning Rs. 32 lakhs to its Directors/ Shareholders, contrary to Income Tax rules and in answer it was admitted on 13.3.1973 that according to the balance sheet of the said company as on 31st October, 1977 Rs. 32.63 lakhs were outstanding against two of its directors. It was also stated that a complaint was received from two persons describing themselves as ex-employees of M/s. Pure Drinks (New Delhi) Ltd.. that there have been large scale misappropriation of funds of the company. It was disclosed in the Parliament that the complaint was under examination. By question No. 1982 in Lok Sabha it was asked whether it was a fact that Punjab & Sind Bank situated in "B" Block in Connaught Circus, New Delhi refunded a substantial amount of interest running into more than Rs. 10 lacs to Pure Drinks (P) Ltd. and its associate concerns and in answer on 8th September, 1981 the information was not given in view of Section 13 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. By question No. 6767 in the Lok Sabha it was asked whether the balance sheet of Southern Bottlers (Private) Ltd. Patiala showed a cumulative loss of Rs. 51.9 lacs and advance of Rs. 39.4 lacs as interest free loans to Charanjit Singh and I a ljit Singh without stipulation for repayment. In answer it was admitted on 7th April, 1981 that the company showered a cumulative loss of Rs. 51.90 lakhs and that according to the balance sheet sum of Rs. 39.44 lacs was shown as debts due from Shri Charanjit Singh and Shri Daljit Singh. There was no indication in the balance sheet whether the debts were interest free and without stipulation for repayment. By question No. 79 it was asked for how many years the Directors of Pure Drinks Pvt. Ltd. New Delhi had been taking interest free loans from the company and how much interest had been lost by the company and how much the Directors gained. In answer it was stated on 23rd February, 1979 that the company was neither charging any interest on debit balances nor paying interest on credit balances and the amounts of interest, if any, lost by the company and gained by the director were being ascertained. It was also disclosed that Charanjit Singh had a debit balance of Rs. 32,736 and Rs. 49,290.00 for assessment years 1969-70 and 1972-73 respectively.

(19) Question No. 1425 in the Lok Sabha was asked relating to encroachment of railway land by Pure Drinks (Pvt.) Ltd. and on 1st March, 1979 it was answered

that the lease of the firm was initiated with effect from 31st December, 1972 and the eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 19/1 were pending. Question No. 988 was asked regarding misappropriation of company funds as complained by the employees of the Pure Drinks (New Delhi) Limited. In answer on 13th March, 1980 it was disclosed that inspection report was awaited and that action would be taken when received.

(20) From the various questions asked and answered in the Parliament it is apparent that the questionnaire includes items which were subject matter of Parliament questions. The defendants initially sought an interview with the plaintiff to obtain his views on the questions of public interest in which he was concerned for publication in the magazine. The plaintiff's secretary informed that he wanted written questions. The questionnaire dated 21st January, 1982 was thus sent requesting him to furnish reply. The letter dated 2nd February, 1982 is in the form of a reminder and not a threat of any nature whatsoever to the plaintiff.

(21) Learned counsel for the plaintiff submits that under these circumstances the defendants should be restrained from publishing the article. He refers to various precedents but none of them is applicable to the facts of the present case. Learned counsel submits that prima facie case means that the case set up by the plaintiff needs consideration and the trial court is not entitled to scrutinise the controversy on merits. He submits that while deciding the application for interim injunction the court should determine limited question if case requires investigation and that it cannot transgress the limits by pre-judging the case. He refers to *Gurmukh Singh v. M/s Inderprasth Finance Co.*, 1976 Raj. Law Rep 1 and *Sahab Dayal and Chamanlal v. M.C.D.*, 1976 Raj. Law Rep 550. Similar observations were made in *George Vs. State*, . There is no dispute about the statement of law regarding the grant of temporary injunction. The facts of the case at the time of granting temporary injunction may not be scrutinised but it has to be determined whether the plaintiff has a case at all for investigation.

(22) In *Hari Shankar Vs. Kailash Narayan and Others*, a temporary injunction was issued restraining the newspaper from publishing certain news. In that case the newspaper had started from 24th March, 1979 publishing false and defamatory news against the petitioner in every issue of the newspaper and the news was being published in the defamatory and insulting way and intention behind it was to blackmail the petitioner and extort money from the petitioner. There was material on the record of that case to hold that the newspaper had already published news in an insulting and defamatory way and Therefore the temporary injunction was issued to restrain future publication of the news items pertaining to the petitioner. In the instant case before me there is no connection between various issues of defendants' magazine referred to above and the questionnaire. Thus it cannot be said that their story which the defendants intend to publish would be defamatory.

(23) Learned counsel for the defendants submits that they intend to defend the

article to be published by them on the grounds of justification, fair comment and qualified privilege and as such no temporary injunction should be issued. In Gatley on Libel and Slander 8th edition para 1574 page 641 it has been observed, "when once a defendant says that he is going to justify, the words complained of, there is an end of the case so far as an interim injunction is concerned". In Halsbury's Laws of England, 4th edition vol. 28 para 163 page 87 it is observed, "it is well settled that no injunction will be granted if the defendant states his intention of pleading a recognised defense, unless the plaintiff can satisfy the court that the defense will fail. This principle applies not only to the defense of justification but also the defenses of privilege, fair comment, consent and probably any other defense". In Fraser-w.Evans and others, 1909(1) All E L R 8 the newspaper admitted that the article to be published would be defamatory to the plaintiff but said that, if they were sued, they would plead justification and fair comment. The injunction was discharged on appeal and it was observed that 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. Observations to the same effect were also made in Woodward and others v.Rutchins and others, 1977 (1) Wee Law Rep 760.

(24) In the instant case the article is not in existence. The defendants intend to publish an article preferably after obtaining the views and comments of the plaintiff on the questionnaire dated 21st January, 1982. The difficulty in dealing with this case is that I do not know what the article when published will contain. It is not known what facts will be stated and what comments will be made. It is Therefore not possible at this stage to determine whether the proposed article would be defamatory or not. But as the defendants state that they would plead justification and fair comment for publishing the article pertaining to the plaintiff, I am of the opinion that injunction should not issue. None of the questions asked by the defendants relate to the private life of the plaintiff. All questions are directly connected with his public life. defense of fair comment and justification has been raised by the defendants and Therefore injunction is not to be issued.

(25) After giving my careful consideration to the facts of the present case, I am of the opinion that there is no infirmity in the judgment of the Lower Appellate Court and there is no ground to interfere with the order u/s 115 of the Code, I, Therefore, dismiss this revision with no order as to costs.