

(2012) 07 MAD CK 0019

In the Madras High Court

Case No : O.A. No. 776 of 2011 in C.S. No. 623 of 2011

Fr. Jegath Gaspar Raj

APPELLANT

Vs

The Editor, Kumudham Reporter (Magazine), Kumudham
Publications Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Constitution of India, 1950 — Article 10, 104, 105, 19, 19(1)(a)
Official Secrets Act, 1923 — Section 9

Citation : (2012) 6 CTC 771

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : Isaac Mohanlal, for the Appellant;

Final Decision : Allowed

Judgement

K.B.K. Vasuki, J.—The Plaintiff is the Applicant herein. The Suit is filed for Permanent Injunction restraining the Defendants from making or

publishing any further defamatory articles, statements, photos, or caricatures imputing the character or insinuating the reputation or defaming the

name of the Plaintiff in any manner and mandatory injunction directing the Defendants to pay to the Plaintiff a sum of Rs. 50 lakhs towards

damages. The Suit is filed along with this Application for interim relief in the same line as that of the permanent relief.

2. According to the Plaintiff, he is a Roman Catholic Priest, having high academic qualifications with additional qualification in Classical languages,

trained musician and writer of hundreds of articles both in Tamil and English. He is, according to him,

(i) the founder and Managing Trustee of a Non-Governmental organisation known as ""Tamil Maiyam"" having the object of protecting and

promoting the rich cultural heritage of the Tamils and to undertake linguistic and social research;

(ii) Co-founder of ""Give Life"" Charity aiming at supporting 8000 under privileged and destitute children;

(iii) founder of Transit School in Chennai for the children of migrant construction workers from Bihar, Orissa, Andhra Pradesh and other parts of

India;

(iv) founder of two publications viz., ""Nalai Veliyeedu"" and ""Nailer"" having published number of books on psycho social Counseling and Tamil

linguistics and comparative linguistics;

(v) founder and head of ""Organisation for Sustainable Natural Resources Management"" known as ""Earth Smiles"" which prepared and released

green manifesto during the last Tamil Nadu Assembly elections and which has also been preparing an Environment Plan for Chennai Coastal Zone

Management;

(vi) founder and Managing Director of Goodwill Communications Limited which offers professional services in social research;

(vii) founder of NAAM (WE) a movement for democracy, good governance and equitable development;

(viii) served as Coordinator in Radio VERITAS in Manila, Philippines from 1996 to 2006;

(ix) Co-creator of the historic Chennai Sangamam

(x) His cultural music Creation was ""Thirukural Isai Thamizh"" a project done in partnership with the Central Institute of Classical Thamizh under the

Union Ministry of Human Resources Development; and

(xi) head of Short wave Tamil International Broadcast.

He was awarded ""Matchimai Virudhu-Award of Glory"" jointly by 56 Tamil Sangams in USA, in July 2006 at New Jersey, and titles ""Thiruvасаga

Chemmal"" by Thamizh Saiva Munnetra Sangam and ""Thamizh Thondar"" by Theiva Thamizh Peravai.

3. The Defendants 1 to 6 are the Editor, Publisher, News Editor, Senior Correspondent and Reporter of Tamil magazine by name Kumudham.

4. The Plaintiff has come forward with the Suit along with the present Application for the relief referred to above on the ground that the Defendants

have published false and defamatory articles about the Plaintiff, the contents of which are not only true, but also published not in good faith and the

same has been amounting to character assassination with an intention to bring disrepute and disrespect to the Plaintiff, as a result, the Plaintiff has

suffered Loss of Reputation and mental agony, which cannot be compensated by payment of damages alone and the Respondents are, hence, to

be restrained from doing so to avoid any further damage to the Plaintiff.

5. The publications, which are complained of in the present suit, are dated 23.12.2010 under the caption at pages 2 to 5 and enclosed at pages 6

to 8 and ""corporate priest"" and publication dated 13.2.2011 under the caption by Swami-vambanandha"" at pages 6 to 8 & 49 and publication

dated 28.4.2011 under the caption ""Aatchi-yai Pidikka Karunanidhiyin Power Plan"" at pages 44 to 48 with photograph of the Plaintiff-Jegath

Gaspar as Jagajaala Killadi and publication dated 7.8.2011 under the caption ""Poli Samiyar"" with sub-caption ""All that is said is truth"" at pages 14

to 16 of the type set. The impugned articles are reproduced in paras 26 to 32 at pages 9 to 12 and in paras 38 & 39 at pages 13 to 18 of the

Plaint and in paras 21 to 27 at pages 8 to 11 and in paras 33 & 34 at pages 13 to 18 of the Affidavit filed in support of this Application.

6. The contents of the articles mentioned above, according to the Plaintiff, are totally false, malicious, tainted with ulterior motive, imaginary,

unfounded, and per se defamatory and has done inestimable and incalculable damage to his social status and reputation and put him under public

disgrace and humiliation and completely lowered his respect in the minds of the public, as a result, he suffered untold hardship.

7. Whereas, the Defendants have in their Counter Affidavit defended the same on the ground that the impugned publications are based on true

facts and the issue involving the Plaintiff is of such public importance and the media is responsible to convey the same to the public with good

intention and the media has an absolute privilege to do so.

8. Heard the rival submissions made on both sides.

9. The Articles referred to in the Plaint as well as in the Affidavit filed in support of this application are enclosed at pages 1 to 96 & 156 to 248 of

the typed set of papers and the objectionable portion relating to the Plaintiff is, according to him, at pages 6 to 8, 46, 56, 143, 169, 216 to 218 of

the typed set of papers. The contents of the articles proceeds as if the Plaintiff is, having contact with the political leaders and by reason of such

contacts, involved in the spectrum issue. While all the articles do refer to his such political high level contacts and so called involvement in the

spectrum issue concerned, the only article which refers to his personal life is published under the caption enclosed at pages 216 to 218 of the typed

set of papers.

10. While the Plaintiff has sought the Suit relief on the strength of right of privacy, the Defendant would defend their action on the basis of right of

freedom of expression and freedom of speech. Our High Court has in the judgments reported in R. Rajagopal @ R.R. Gopal @ Nakkheeran

Gopal, Editor, Printer and Publisher of Nakkheeran (Bi-weekly), Nakkheeran Publications, Nakkheeran Printers and Binders and A. Kamaraj,

Associate Editor, Nakkheeran (Bi-weekly), Nakkheeran Publications Vs. J. Jayalalitha and Mrs. N. Sassikala, and A. Raja and another v. P.

Srinivasan, Publisher and A. Raja and M.A. Parameswari Vs. P. Srinivasan Publisher and Printer of Junior Vikatan Vasan Publications Private

Limited, K. Ashokan Editor, Vasan Publications Private Limited, Saroj Ganpath, Chief Reporter and Prakash Jawadekar, dealt with the legal

aspects on Right to R. Rajagopal @ R.R. Gopal @ Nakkheeran Gopal, Editor, Printer and Publisher of Nakkheeran (Bi-weekly), Nakkheeran

Publications, Nakkheeran Printers and Binders and A. Kamaraj, Associate Editor, Nakkheeran (Bi-weekly), Nakkheeran Publications Vs. J.

Jayalalitha and Mrs. N. Sassikala, has dealt with this aspect, by referring to Article 19 of the International Covenant on Civil and Political Rights,

1966 and Article 10 of the European Convention on Human Rights and Articles 19(1)(a) & 19(2) of our Constitution and has referred to various

judgments of English Court, Supreme Court, Privy Council and our High Court.

11. Our High Court has, at the concluding paras 21 & 22 of its judgment extracted the broad principles summarized by the Supreme Court in the

judgment reported in R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, . For better appreciation, the same is

extracted as follows:

21. We may now refer to the judgment of the Supreme Court in celebrated case of R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil

Nadu and Others, . The said case dealt with the right of privacy of citizens of this country and the parameters of the right of privacy to criticise and

comment on acts and conduct of public officials. The case related to the alleged autobiography of Auto Shankar, who was convicted and

sentenced to death for committing six murders. In the autobiography, he had commented on his contact and relations with various Police officials. It

was the stand of the Police that the autobiography was not authored by Auto Shankar. It was stated that neither Auto Shankar nor his wife were

made parties before the Supreme Court in the Writ Petition filed under Article 32 of the Constitution. The right of privacy of citizens was dealt with

by the Supreme Court in paragraph 9 in the following terms:

The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages

resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin -- (1) the general

law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy, and (2) the Constitutional recognition given to

the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been

violated where, for example, a person's name or likeness is used, without his consent, for advertising -- or non-advertising -- purposes or for that

matter, his life story is written -- whether laudatory or otherwise -- and published without his consent as explained hereinafter. In recent times,

however, this right has acquired a Constitutional status. We shall proceed to explain how ? Right to privacy is not enumerated as a fundamental

right in our Constitution but has been inferred from Article 21.

There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause

offence resulting from the mere thought that individuals might be engaging in such activities and that such ""harm"" is not constitutionally protectible by

the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a

sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves,

an image that may reflect the values of their peers rather than the realities of

their natures.

The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the

right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy

as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.

The Supreme Court, thereafter proceeded to refer to various decisions of the Indian Courts starting with the first decision of the Supreme Court in

Kharak Singh Vs. The State of U.P. and Others, which was subsequently elaborated in Gobind Vs. State of Madhya Pradesh and Another, . The

right to privacy as enunciated by the Courts of the United States and England were also discussed in great depth. The Supreme Court was of the

view that the principles enunciated in the various judgments referred to above were applicable to public figures who often play a crucial role in

regulating an orderly society and the citizens have a legitimate and substantial interest in the conduct of such persons. Thus, the Supreme Court was

of the opinion that the freedom of press extends to engaging in uninhibited debate about the involvement of public figures in public issues and

events. The Supreme Court felt, that a proper balance of the freedom of press as well as right of privacy has to be struck in a democratic way of

life as contemplated by our constitution. The Supreme Court concluded that the State or its officials have no authority in law to impose prior

restraint upon publication of materials, defamatory of the state or of its officials. The Supreme Court quoted, with approval, the observations in

New York Times Vs. US, 1971 402 US 4713 to the effect that any system of prior restraints of freedom of expression comes to this Court

bearing a heavy presumption against its Constitutional validity and that in such cases, the Government ""carries a heavy burden of showing

justification for the imposition of such a restraint"". The Supreme Court thus held that the remedy of the public figure would arise only after the

publication is made and would be governed by the principles indicated in the judgment and that there is no law under which they could prevent the

publication of a material on the ground of such material being likely to be defamatory of them. Even in that case, it is held, the remedy is only after

the publication. In paragraph 26 of the judgment in R. Rajagopal's case (supra), the broad principles summarised by the Supreme Court are as

under:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a ""right to be let alone"".

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. If he does so, he would be violating, the right to privacy of the person concerned and would be liable in an action for damages. Position

may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such

publication is based upon public records including Court records. 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. We are, however, of the

opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual

assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in

press/media.

(3) There is yet another exception to the rule in (1) above -- indeed, this is not an exception but an independent rule. In the case of public officials,

it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct

relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless

the official establishes that the publication was made (by the Defendant) with reckless disregard for truth. In such a case, it would be enough for the

Defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove

that what he has written is true. Of course, where the publication is proved to be

false and actuated by malice or personal animosity, the Defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) & (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of Court and Parliament and legislatures protected as their privileges are by Articles 105 & 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, Local Authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a Suit for damages for defaming them.

(5) Rules 3 & 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose prior restraint upon the press/media.

22. In *Kartar Singh and Others Vs. The State of Punjab*, , His Lordship Justice Bhagwati (as he then was) in paragraph -12 observed as follows:

These slogans were certainly defamatory of the Transport Minister and the Chief Minister of the Punjab Government but the redress of that

grievance was personal to these individuals and the State authorities could not take the cudgels on their behalf by having recourse to Section 9 of

the Act unless and until the defamation of these individuals was prejudicial to the security of the State or the maintenance of public order. So far as

these individuals were concerned, they did not take any notice of these vulgar abuses and appeared to have considered the whole thing as beneath

their notice. Their conduct in this behalf was consistent with the best traditions of democracy. ""Those who fill a public position must not be too thin

skinned in reference to comments made upon them. It would often happen that observations would be made upon public men 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 Cock-

bum, C.J. in *Seymour v. Battenworth* and see the dicta of the Judges in *R. v. Sir R. Garden*, 1879 (5) QBD).

(B) Whoever fills a public position renders himself open thereto. He must accept

appendage to this office. (Per Bramwell B. In Kelly v. Sherlock,
1866 (1) QB 686 (689).

(C) 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 importance to the same by prosecuting the persons responsible for the same.

Thereafter, our High Court in R. Rajagopal @ R.R. Gopal @ Nakkheeran Gopal, Editor, Printer and Publisher of Nakkheeran (Bi-weekly),

Nakkheeran Publications, Nakkheeran Printers and Binders and A. Kamaraj, Associate Editor, Nakkheeran (Bi-weekly), Nakkheeran

Publications Vs. J. Jayalalitha and Mrs. N. Sassikala, has proceeded to pass the judgment as follows:

28. The right to publish and the freedom of press as enshrined in Article 19(1)(a) of the Constitution of India are sacrosanct. The only parameters

of restriction are provided in Article 19(2) of the Constitution. As observed by Mudholkar, J. in Sakal Papers (P) Ltd. and Others Vs. The Union

of India (UOI), the Courts must be ever vigilant in guarding perhaps this most precious of all the freedoms guaranteed by our Constitution. The

reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which

envisages changes in the composition of legislatures and Governments and must be preserved. The interim order granted by the learned Single

Judge is a blanket injunction. The order virtually amounts to a gag order or censorship of press. Such censorship cannot be countenanced in the

scheme of our constitutional framework. Even assuming that the articles published by the Appellants amount to charter assassination of the

Respondents, there is no justification for granting a blanket injunction restraining the Appellants from publishing any articles, in future. It would not

be appropriate for us to examine the articles at this stage on the touchstone of defamation, but what we do observe is that they are not of such a

nature warranting a restraint order, especially when the Appellants are willing to face the consequences in a trial in case the same are held to be

defamatory and the plea of the Appellants of truth is yet to be analysed by the Court.

29. The fundamental right of freedom of speech is involved in these proceedings

and not merely the right of liberty of the press. If this action can be maintained against a newspaper, it can be maintained against every private citizen who ventures to criticise the ministers who are temporarily conducting the affairs of the Government. In a free democratic society those who hold office in Government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. As observed in Kartar Singh's case (supra), the persons holding public offices must not be thin-skinned with 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. At times, public figures have to ignore vulgar criticisms and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same. In the instant case, the Respondents have already chosen to claim damages and their claim is yet to be adjudicated upon. They will have remedy if the statements are held to be defamatory or false and actuated by malice or personal animosity.

30. As observed in R. Rajagopal's case (supra), the right to privacy has two aspects which are but two faces of the same coin. First, the general law of privacy which offers a tort action for damages resulting from an unlawful invasion of privacy and secondly, the constitutional recognition given to the right to privacy which protects personal privacy against unlawful Government invasion. Though the right to privacy can be characterised as a fundamental right, as held in R. Rajagopal's case (supra) it is not an absolute right. In *Time, Inc. v. Hill*, 385 US 374, it was pointed out that in the case of public officials insofar as their official function is involved, they are substantially without a right to privacy and factual error and content defamatory of official reputation or both, are insufficient for the award of damages for false statements unless actual malice-knowledge that the statements are false or reckless disregard of the truth is alleged and proved. In a democratic set up a close and microscopic examination of private lives of public men is the natural consequence of holding of public offices. 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.

What a person holding public office does within the four walls of his house does not totally remain a private matter. We agree with Mr. Jothi that the scrutiny of public figures by media should not also reach a stage where it amounts to harassment to the public figures and their family members and they must be permitted to live and lead their life in peace. But the public gaze cannot be avoided which is a necessary corollary of their holding public offices.

(emphasis supplied)

12. Thus, our High Court was, in both the cases, pleased to observe that the persons occupying public position or involved in public activity, cannot have any grievance against any article relating to their official function or public activities and the right to privacy can be claimed only when the articles are purely relating to the personal life of the political person. Our High Court by observing so, was pleased to restrict the interim relief in so far as the publication relating to personal life and family members are concerned and the same is applicable not only to the Government, Local Authority and other organs and institutions exercising Governmental powers and other persons occupying high position in the same, but also applicable to public figures having contact with persons in official position and involving themselves in public activity.

13. As far as the Plaintiff in the present case is concerned, though he does not hold any high official position or in political power, he can be easily treated as public figure by reason of his high level contacts and various activities in public life, as such, the publications except article dated 7.8.2011 about his alleged involvement in 2G Spectrum, which is claimed to have posed serious threat to economy of the nation, cannot be said to be defamatory. No article of such kind can be restrained from being published without verifying the truth or otherwise of the same. Considering the nature of his public activities and the nature of the issue into which he is implicated, the question of imposing any restriction on future publication does not arise herein, by applying the observation of the Division Bench of our High Court in R. Rajagopal @ R.R. Gopal @ Nakkheeran Gopal, Editor, Printer and Publisher of Nakkheeran (Bi-weekly), Nakkheeran Publications, Nakkheeran Printers and Binders and A. Kamaraj, Associate Editor, Nakkheeran (Bi-weekly), Nakkheeran Publications Vs. J. Jayalalitha and

Mrs. N. Sassikala, which is extracted at para 12 of this order.

14. Whereas, the publication or article enclosed at pages 216 to 218 of the typed set relating to the Plaintiff is different. The particular para of the

same is purely relating to his personal life and the same cannot be allowed to be published in such a reckless manner without his consent. Thus,

applying the principles laid down by our Supreme Court and High Court, this Court is inclined to grant interim injunction in limited manner. In the

result, this Application is ordered, thereby restraining the Respondents from printing, publishing and circulating any defamatory articles, statements,

photos or caricatures imputing the character or insinuating the reputation or defaming the name of the Applicant in any manner relating to the

personal life and private affairs of the Applicant and his family members without the Plaintiff being communicated and without his being sought for

clarification, if any.