

(1981) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : Civil Revision No. 617 of 1979

Hari Shankar

APPELLANT

Vs

Kailash Narayan and Others

RESPONDENT

Date of Decision : 02-04-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 19(1)
Specific Relief Act, 1963 — Section 37

Citation : AIR 1982 MP 47 : (1981) 26 MPLJ 589 : (1981) MPLJ 589

Hon'ble Judges : A.R. Navkar, J

Bench : Single Bench

Advocate : S.K. Dubey, for the Appellant; V.K. Bharadwaj, for the Respondent

Final Decision : Allowed

Judgement

A.R. Navkar, J.

This is a revision against the order dated 24-8-1979 passed by Second Addl. District Judge, Gwalior in Misc. Civil Appeal No. 54/1979 reversing the order dated 14-5-1979 passed by Third Civil Judge Class II, Gwalior in Civil Suit No. 15-A/1979.

The facts giving rise to this petition are that the non-petitioner No. 1 is the Editor and Publisher of "Weekly Gwalior Reporter" and the non-petitioners Nos. 2 to 5 are the printers of the newspaper. The non-petitioner started from 24-3-79 to publish false and defamatory news against the petitioner in every issue of the newspaper. The news was being published in the defamatory and insulting way, and intention behind it was to blackmail the petitioner and extort money from him. The issues of "Weekly Gwalior Reporter" have been submitted in the trial Court along with the plaint. The petitioner, therefore, filed a suit against the non-petitioners for the damages and for in-junction to restrain from publishing such false and defamatory news against the petitioner. The trial Court looking to the contents of the newspapers in which defamatory and insulting words were used

against the petitioner, issued an ex parte temporary injunction restraining the non-petitioners from publishing news against the petitioner. The non-petitioners Nos. 1 and 2 went in appeal against the order of the trial Court and the appellate Court allowed the appeal. Aggrieved by the said order of the appellate Court, the present revision is filed.

Before taking into consideration the merits of the case, it will be proper to see as to why the appellate Court has allowed the appeal and set aside the injunction order passed by the trial Court. In para 5 of the judgment, the learned appellate Court has observed that in the present case normal procedure for hearing on injunction application by issuing notice to the other side was not followed. It can certainly be issued if there are compelling reasons for passing an order in the absence of the other party, and it was also held that there were no compelling reasons in this particular case to pass an ex parte order. As the appeal has been allowed, the point discussed above loses much of its importance. The other submission made before the appellate Court is that there is a fundamental right vested in non-petitioner No. 1, who is Editor and Publisher, and non-petitioners NOS. 2 to 5, who are publishers of the non-petitioner No. 1, of freedom of press and free expression, and if an injunction is granted, the fundamental rights will be arrested. Lastly, the appellate Court has observed that there can be compensation to the plaintiff/petitioner, and injury cannot be said to be irreparable. Therefore, no blanket injunction can be granted in favour of the plaintiff. In para 8 of his judgment, the learned appellate Court has also observed that when a defamatory matter is published against an individual respectable citizen, it gives rise to two types of actions. One of them is a civil wrong which may justify a suit for damages, and the other remedy is a criminal prosecution for defamation. The plaintiff has chosen the first category. Further, the learned appellate Court has observed that it is an established law that whenever an injury is reparable by damages, no injunction is to be issued. Similarly, no injunction is to be issued to prevent an act which tantamounts to commission of an offence. Discussing the matter in this way, the appellate Court has observed that there is no balance of convenience in favour of the plaintiff and therefore, he allowed the appeal and dismissed the application filed by the petitioner in the trial Court for issuing an injunction asking the non-petitioners not to publish the defamatory matters against him.

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 licence against a citizen and asking him to take money as compensation for the injury, he has suffered to his reputation. The Appellate Court itself has found that publishing a defamatory matter gives remedy of two types, one is criminal prosecution for defamation and the other, suit for damages. In my opinion, Article 19,

Constitution of India does not give a free hand under the guise of free expression and freedom of press a right to go on publishing defamatory matter, which is a criminal Act.

I may here refer to K.V. Ramaniah Vs. Special Public Prosecutor, in which the position of law has been succinctly described. It is observed in that judgment as under (at pp. 199-200) :

"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 in 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 unbridged 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 doctrines 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 and it reads thus : "19 (2). 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 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."

The same matter is discussed on page 1028 in Row's Law of Injunctions -- Vol. 2 -- 1976 edition, under the heading "Newspapers" as under :

"Newspapers are subject to the same rule as other critics and have no special right or privilege, and in spite of the latitude allowed to them, it does not mean that they have any special right to make unfair comments or to make imputations upon or in respect of a person's profession or calling. The range of a journalist's criticism or comment is as wide as and no wider than that of any subject. Though it may be said to be true in one sense that newspapers owe a duty to their readers to publish any and every item of news that may interest them, that is not however, such a duty as makes every communication in the

paper relating to a matter of public interest a privileged one. The defendant has to show that what he communicated was relevant or pertinent to the privileged occasion."

The same topic has been considered taking into consideration the Specific Relief Act at page 1037 of the said Book as under :

"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 this 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 Chap. 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 case of defamation. Illustration (e) states : "A threatens to publish statements concerning B which would be punishable under Chap. 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. Any opinion expressed by me in allowing the revision shall not stand in the way of the trial Court or the Appellate Court in deciding the matter according to law.

The result, therefore, is that the revision succeeds and is allowed with costs. The" order of the Appellate Court is set aside and that of the trial Court is affirmed. Counsel's fee Rs. 50/-, if certified.