
(1959) 03 MAD CK 0011
In the Madras High Court
Case No : Writ Petition No. 1492 of 1956

K.N. Ganesh

APPELLANT

Vs

Chief Presidency Magistrate, Egmore, Madras and Another

RESPONDENT

Date of Decision : 11-03-1959

Acts Referred:

Press and Registration of Books Act, 1867 — Section 5(2), 6

Citation : AIR 1959 Mad 519 : (1959) 72 LW 416

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : R. Balakrishnan, for the Appellant; Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Iyer, J.—This is an application under Article 229 of the Constitution for the issue of a writ of certiorari or other appropriate

writ calling for the records in R. O. C. 4561 /56-E on the file of the Chief Presidency Magistrate and for quashing the order passed therein on 19-

11-1956.

2. The petitioner claims to have acquired for consideration the proprietorship of a Tamil quarterly journal entitled ""Manikkodi"" from its original

proprietor. It is stated that thereafter, that is, on 3-2-1950, he declared himself a publisher of ""Manikkodi"" u/s 5 of the Press and Registration of

Books Act of 1867, which shall be hereafter referred to as the Act.

That was followed by the publication of a monthly short story journal under the name of ""Manikkodi"" for sometime. The publication of the journal

was discontinued thereafter: however the petitioner was running his office in the same premises under the name of Manikkodi Kariyalayam dealing

with books, journals etc. He claims that his business operations and trading transactions had become associated in the mind of the public with the name of Manikkodi.

With a view to renew the publication of the journal the petitioner filed on 25-9-1956 an application u/s 5(2) of the Act to make a declaration as a publisher of that journal.

3. Meanwhile one C. S. Krishnan applied and made a declaration on 11-8-1956 to the first respondent for a similar purpose on the ground that he contemplated the starting of a journal under the name of Manikkodi. That declaration, it is admitted, lapsed under the provisions of Section 5(2) A, so that on 25-9-1956 there was only the application of the petitioner. On 31-10-1956 the second respondent C. S. Krishnan applied by means of a letter to the Chief Presidency Magistrate, Madras, that he intended to commence the journal as contemplated by him and applied to make a fresh declaration to that effect.

4. The Chief Presidency Magistrate, Madras, the first respondent obtained a report from the Police Commissioner and also the Press Registrar and heard both the petitioner as well as the second respondent and raised the following order on 17-11-1956. ""Heard Mr. K. M. Ganesan and C.

S. Krishnan. Mr. C. S. Krishnan will be allowed to declare himself as Editor and Publisher of Manikkodi"". He followed this up with a

communication to the petitioner, R. O. C. 4561/56E dated 5-11-1956 stating that as there was already a journal published by C. S. Krishnan

under the name of Manikkodi the petitioner should change the title of his proposed journal. The assumption that C. S. Krishnan had already

published a journal under the name of Manikkodi is inaccurate as he never implemented his declaration on 11-8-1956 with a publication.

The first ""respondent however by his order dated 19-11-1956 allowed C. S. Krishnan to declare himself as editor and publisher of the journal

Manikkodi and directed the petitioner to change the name of his proposed journal. The disappointed publisher has come forward with this

application for quashing the order of the first respondent.

5. The contention On behalf of the petitioner is that on 25-9-1950, when the petitioner applied to the Chief Presidency Magistrate to make the

declaration in respect of his journal ""Manikkodi"", there was no publication in

existence of any journal of that name as the declaration made earlier by C. S. Krishnan on 11-8-1956 had by virtue of Section 5(5) of the Act lapsed and that there was no impediment in his being allowed to make the declaration for his journal under the title ""Manikkodi"".

6. To appreciate and ascertain the scope of the jurisdiction of the powers of the Magistrate u/s 5 it is necessary to refer briefly to the historical background. The first Press Ordinance was passed on December 18th, 1823, during the Governor Generalship of John Adam. The Ordinance required that all matters printed in a press or published thereafter except certain specified items of news should be printed and published under licence from the Governor-General in Council.

The application for a licence should give the name or names of the printer and publisher of the proprietors, their place of residence, the location of the press and the title of the newspaper, magazine, register, pamphlet, or other printed book Or paper. A fresh licence was necessary if the printer or publisher or proprietor changed his address. There were also provisions which reserved to the Governor General a right to call for a fresh application and the issue of such notice invalidated the previous licence, and there was also a power of resuming or recalling a licence, which was thereafter to be treated as null and void. A penalty was imposed for contravention of the provisions of the Ordinance. This Ordinance was, however, repealed by Act XXI of 1835, which was due to the efforts of the great champion of the Indian Press, Sir Charles Metcalfe when he was for a short time the Governor General.

7. That Act provided for a declaration by the printer and publisher of a newspaper giving a true and precise account of the premises of publication with an obligation to inform the change of place in which case a fresh declaration was made necessary. There was also a penalty for non-declaration. The effect of that enactment was that no licence or previous permission was necessary for either publishing or conducting a newspaper. A mere declaration alone was sufficient.

The object of the declaration was to make known who the proprietor, printer or editor was in regard to a newspaper or other publication so that the responsibility for an improper publication, might be fastened on the proper person. Any person who was a major could declare himself as a

publisher and such declaration did not depend on the grant of a permission by any authority. Change of place of the publication or the publisher

and of the latter leaving India necessitated a fresh declaration. Failure to make a declaration entailed penal consequences.

8. The Act underwent certain amendments in The subsequent years till finally Act XXV of 1867 was passed. It has been said that the Act is only a

regulation Act. Section 5 makes it obligatory on all newspapers published in British India to be in conformity with the rules laid down thereafter.

Section 5(2) states that the printer and publisher of every newspaper shall appear in person or by agent duly authorised before a Magistrate

specified in that section and shall make and subscribe in duplicate a declaration that he is the printer or publisher or the printer and publisher of the

newspaper entitled (enter the name of the paper) and printed at a particular place.

The other provisions about change of place and also the necessity for a new declaration were also enacted. The Act was the subject matter of

scrutiny by the Press Commission, and as a result of their recommendations certain amendments were introduced in the Act under Act LV of

1955. Section 5 was amended by introducing certain new provisions. Sub-section (5) introduced by the amending Act is as follows:

Every declaration made in respect of a newspaper shall be void where the newspaper does not commence the publication (a) within six weeks of

the declaration in the case of a newspaper to be published once a week or oftener and (b) within 3 months of the declaration in the case of any

other newspaper and in every such case a new declaration shall be necessary before the newspaper can be published." Sub-section (7) of that

section states

Where any other newspaper has ceased publication for a period exceeding twelve months, every declaration made in respect thereof shall cease

to have effect, and a new declaration shall be necessary before the newspaper can be republished.

Sub-section (8) states

Every existing declaration in respect of a newspaper shall be cancelled by the Magistrate before whom a new declaration is made and subscribed

in respect of the same.

9. The first paragraph of Section 6 has been amended by the introduction of a proviso. The former required that each of the two originals of every

declaration made shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration was made. The

proviso to that section introduced by the amending Act states

Provided that where any declaration is made and subscribed u/s 5 in respect of a newspaper the declaration shall not, save in the case of

newspapers owned by the same person, be so authenticated unless the Magistrate is satisfied from such enquiry as he thinks fit to make from the

Press Registrar or otherwise that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other

newspaper, published either in the same language or in the same State.

10. The proviso prevents any person from declaring himself as an editor or a publisher of a newspaper if there existed already a newspaper of that

name either in the same language or in the same State. It was evidently intended to prevent unfair competition between two newspapers published

by different persons under the same name and title. The proviso would have the effect of protecting an existing newspaper in regard to its name.

11. u/s 5(2) of the Act it will be open to any person to declare his intention of starting a newspaper. There would be no restriction in the choice of

a title or name of his paper so long as there has been no newspaper of that name either in the same language in India or in the same State, he would

be entitled to adopt that name for his publication. That would mean that on the date when he seeks to make a declaration u/s 5(2) there should be

no other paper of that name and of the kind contemplated in the proviso to Section 5. If there was none such, there would be no discretion left in

the Magistrate to direct the publisher to adopt any other name.

Section 5 does not invest the Magistrate concerned with jurisdiction to decide the matter as to who would be entitled to make a declaration as

editor of a newspaper with a particular name. It would follow that he who comes first should be entitled to make a declaration u/s 5. Under the

proviso to Section 6 a limited jurisdiction is no doubt given to the Magistrate to enquire as to whether there is any other newspaper published in the

same language or in the same State having the same name by some other person and if there was one such he should refuse to authenticate the

proposed declaration.

That provision does not invest the Magistrate with jurisdiction to decide between two rival claimants for using the same name or title to their

newspapers. Under the law there is no right to prevent the use of a name by any person in connection with his trade or business except where one

has acquired a property to it under the ordinary law or under the statutes like Trade Marks Act etc. If two persons want to use the same name for

their respective newspapers no question of right would arise for neither of them would have the exclusive right to a name.

I have indicated already that the right to start a paper and to make a declaration does not depend on any licence to be granted by any authority. It

follows that there could be no discretion in the concerned Magistrate to refuse to record a declaration except in the case provided for in Section 6

proviso. The duty of the Magistrate is merely administrative, that is to record the declaration, or to refuse to authenticate it in the event of there

being a newspaper of the kind referred to in the proviso to Section 6.

If, therefore, on the day when the petitioner applied to make a declaration with respect to his journal under the title of Manikkodi there was

published newspaper having the same or similar title, he would be entitled to make the declaration u/s 5(2) and there would be no jurisdiction in the

Magistrate to assess the comparative merits between him and a rival who applied later and decide as to which of them would be entitled to the

name or title.

12. I cannot however agree with another contention urged on behalf of the petitioner. In the petition it has been suggested that the petitioner had a

property in the name Manikkodi by reason of the public associating his publications with that name. That question cannot be considered in

proceedings u/s 5(2) of the Act which as I stated is not concerned with adjudication of rights. If the petitioner has acquired a right to use a

particular name for his publication either by reputation or under the provisions of the Trade Marks Act, the remedy for him will be in the civil court.

13. Though no question of title is involved, permitting the publication of a newspaper or journal under the same name or title adopted by an existing

publication may lead to fraud confusion or affect the reputation of the existing paper or occasion pecuniary loss to its proprietors. The proviso to

Section 6 is intended to safeguard an existing newspaper and it imposes a limit to the otherwise unrestricted right of a new comer in regard to the choice of a title to his paper.

14 A difficulty may no doubt- arise in a case where two persons simultaneously want to make a declaration in respect of a newspaper having a particular name. There is no provision under the Act for deciding a dispute in such cases.

15. In the present case, however, there is no such difficulty. Admittedly the declaration made by C. S. Krishnan had lapsed and on 25th

September 1936 when the petitioner sought to declare himself as the Editor of Manikkodi, there was no subsisting journal of the name of

Manikkodi. The petitioner having applied to make the declaration at a time when Krishnan's declaration had lapsed" would be entitled to make a

declaration in respect of his journal Manikkodi before the first respondent u/s 5(2).

16. The learned Chief Presidency Magistrate was, therefore, in error in proceeding to decide between the second respondent and the petitioner.

There is, however, one impediment in the way of issuing the writ to quash the purported judicial order. It is admitted that neither the petitioner nor

C. S. Krishnan ever commenced any publication of any journal under the name of Manikkodi after the date of the order of the first respondent.

It may be that after that date another person might have started a journal of that name. In the absence of evidence in regard to that matter, a writ

quashing the order and directing the Chief Presidency Magistrate to allow the petitioner to make a declaration could not be issued. The petitioner

can now apply to the Magistrate again u/s 5 and if the Magistrate finds there is no prohibition under the proviso to Section 6, for allowing him to

make the declaration that he desires, he would be entitled to make the declaration.

17. With these observations this petition is dismissed. There will be no order as to costs.