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**(2013) 02 DEL CK 0068**  
**In the Delhi High Court**  
**Case No : FAO (OS) 119 of 2013**

Multi Screen Media Pvt. Ltd.

APPELLANT

Vs

Vidya Dhar and Others

RESPONDENT

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**Date of Decision :** 28-02-2013

**Acts Referred:**

Constitution of India, 1950 — Article 19(1)(a), 19(2)  
Evidence Act, 1872 — Section 27

**Citation :** (2013) 198 DLT 478 : (2013) 134 DRJ 585

**Hon'ble Judges :** Pratibha Rani, J; Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** Dushyant Dave, instructed by Mr. Vijay K. Sondhi, Mr. Sanjay Kumar, Mr. Varun Pareek and Mr. Suhail Malik, for the Appellant; Rajiv Nayar and Mr. Sandeep Sethi instructed by Mr. Giriraj Subramaniam, Hitesh Saini and Ms. Zeeshan Hashmi, for the Respondent

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## Judgement

Pradeep Nandrajog, J.—Freedom of speech which includes the right to freely express one's convictions and opinions by word of mouth, writing, printing and all other means (addressed to the eyes or the ears), is a freedom guaranteed to citizens of India under Article 19(1)(a) of the Constitution of India. The rationale for protecting freedom of speech has been variously stated by eminent writers and statesman. T.I. Emerson has advanced four primary reasons: (i) As assuring individual self-fulfillment; (ii) As a means of attaining truth; (iii) As a means of securing participation by the members of the society in social and political decision making; and (iv) As maintaining balance between stability and change in the society. But society cherishes other values to be attained. They are equally important. Impartial administration of justice and a right to presumption of innocence is one such value. The two interests i.e. interest of the society in freedom of speech and right to a fair and impartial administration of justice have to be balanced, for more often than not, they frequently clash with one another. The resolution of the two conflicts requires the identification of the core values of the two social interests, for only then, can the society harmonize the two.

2. Communication is the very essence of social life. It is difficult to imagine a civil society which has no expression. Faith in democracy is rested on the dictum: "Let people have the truth and freedom to discuss it and all will go well." The proponents of freedom of expression believe that if there is free trade in the market place of ideas, truth will grapple with falsehood and would ultimately prevail. Thus, they maintain that no fetters whatsoever and howsoever small can be put on freedom of speech.

3. T.I. Emerson holds the view that suppression of freedom of speech on the ground that it will promote justice is not within the competence of a good society (T.I. Emerson: "Towards a General Theory of First Amendment" (1962-63) 72 Yale Law Journal at p.880).

4. On the other hand, John Rawls, in : "A Theory of Justice" (1972 Oxford Paper Back 1973) p.302 argues that basic liberties are so important that consideration of other advantages can never in themselves be a justification for any derogation thereof.

5. Jacques Maritain, in : "Man and the State" (1951; 1954) p. 106-107 reflects the midpoint view; that by their very nature, no right is absolute. He maintains that conflicts between the various rights requiring reconciliation and that only when reconciliation cannot be effected, should one right i.e. the right to free speech be limited so as not to trample upon other rights.

6. In India, since we have a written Constitution, it is recognized that freedom of speech is not an absolute unlimited right. Article 19(2) provides reasonable restrictions on what is guaranteed by Article 19(1)(a) of the Constitution.

7. Rule of Law is a pillar of a State. There cannot be a civilized society without a legal system. Not a weak and a limp legal system - it has to be an assertive legal system capable of upholding the majesty of the law. Civil societies have recognized that it is in the interest of not only an individual but also of the society as a whole that every member of the society gets a fair trial. Society recognizes that no one should be convicted except on a proper and a fair trial and according to law. Thus, a member of a society who is brought to justice, has a right "to have a decision of the Court on the law as the Court conceives it and the evidence properly submitted."

8. A "fair trial" means a trial conducted free from all prejudice and in which the Court tries the case impartially after considering the evidence which has been properly submitted.

9. Since freedom of speech is fundamental, the press : both print and media, has a right of fair comment on matters of public interest. Indeed, press reports provide a valuable check against malpractices including malpractices in administration of justice - secret trial being dangerous; the crucial question to be addressed is where to draw a line between the "right to tell" and the "right to a fair trial".

10. The first reported case in England is *Pool vs. Sacheverell* (1720) 1 P. Wms. 675 where the press was charged for contempt. In the decision reported as (1742) 2 ALK. 469 *Roach vs. Gorran* Lord Hardwick committed the printer of *St. James, The Evening Post* for libel against witnesses in a pending matter. Perversion or obstruction of the course of public justice was treated as an offence.

11. Any publication which impairs or prejudices or tends to impair or prejudice a free and fair trial was treated as Contempt of Court. Lord Cottenham L.C. in the report published as (1837) 2 Y & Cr. 316 "*Re Ludlow Charities Lechmere Charlton*"s said: "If the object is to taint the source of justice and to obtain the result of legal proceedings different from that which would follow in the ordinary course is a contempt of the highest order".

12. Thus, one measure to gag the Press would be to see whether the offending publication would amount to a contempt of the Court and this would mean to determine whether the publication interferes or tends to interfere in the administration of justice. At the pre-publication stage, applying the aforesaid test, the issue could be decided.

13. It is simply said as aforesaid but difficult to apply, for the reason, a publication which tends to prejudice a case can be classified in two categories : (i) Publications which tend to impair the Courts' impartiality; (ii) Publications which prejudice the Courts' ability to determine the true facts.

14. Further difficulties would arise for the reason, impartiality of a Court can be impaired in three ways:- (i) By commenting on the character of the accused; (ii) By publishing an alleged confession of the accused; (iii) By commenting on the merits of a case. An analysis of the twin character of publications; and further analysis as to under which one out of the three categories where impartiality of a Court can be impaired, is not an easy task and this is the reason why we find plenty of case law reproducing passages after passages from the previous case law and abrupt conclusions being arrived at.

15. Publishing about the character of the accused excite feelings of hostility against the accused and tends to induce the Court to be biased. They make known to the judge or jury, a fact which they ought not to know. No Court can take note of evidence not properly submitted. In (1903) 2 K.B. 432 *R Vs. Parke* and (1906) 1 K.B. 32 *R Vs. Dayles* publications about character of the accused was held to cause prejudice at a fair trial. In (1968) 1 All E.R. 268 *R Vs. Thomson Newspapers Ltd.* pertaining to the accused awaiting a retrial for an offence under the Race Relations Act 1965, the press reported:

Michael Abdul Malik, 34, West Indian came to U.K. 1950. Took to politics after unedifying career as brothel keeper. Procurer and property racketeer.

16. Holding the publisher guilty of interfering in the administration of justice, Lord Parker C.J. said that it was a serious inroad into the right of the accused since the jury was not entitled to know anything of the accused's bad character.

17. Pertaining to the publication of a confession by the accused in (1901) 103 L.T. 636 R Vs Clarke Ex-parte Crippen, Darling J. held the printer and publisher guilty of contempt.

18. It need hardly be emphasized that confessions are admissible in evidence under stringent conditions (Sec. 27 of the Indian Evidence Act 1882) and for a limited purpose.

19. In the decisions (1949) 93 S.O.L. JO 220 R Vs Bolon Ex-parte Haigh, (1957) 1 Q.B. 73 R Vs Odham's Press Ltd. Ex-Parte The People, (1823) 2 L JOS. K.B. 30 R Vs William imputations regarding guilt of the accused were held to be actionable. It was held that any attempt whatsoever to prejudice a criminal case whether by a detail of evidence or by a theatrical exhibition is an offence against public justice. In (1924) 40 T.L.R. 833 R Vs Evening Standards the newspaper which was conducting private investigation and publishing its results was held to be committing "trial by newspaper" by causing a private "criminal investigation" and hence interfering in the administration of justice. (1889) 58 LJQ O.490 Hunt Vs Clarke, (1960) 2 All E.R. 891 R Vs Doufly and (1973) 1 QB 710 Attorney General Vs Times Newspaper Ltd. are other reported decisions on the point.

20. The Committee on the Law of Contempt under the Chairpersonship of Salmon L. J. summarized the danger of trial by press in the following words:

The witness could be bullied or unfairly led into giving an account which was contrary to or put a slant upon the truth. He could commit himself, particularly under the strain and tension of a television interview, to a badly expressed or inaccurately recollected versions of events. Witnesses might also be tempted to give a version of facts which they thought must be newsworthy, particularly if fee were paid for the interview. When such witnesses came to give evidence before the Tribunal they would either have to stick to what had already been said, however inaccurate it might be, or reveal the true facts. In the latter event, the weight of their evidence might be considerably shaken by the discrepancy between what they were telling the Tribunal and what they had said previously. This might greatly under the Tribunal, and, in an extreme case, prevent it from arriving at the truth.

21. A middle path was adopted by Lord Denning in the Thelohomide case, as is popularly known, reported as 1973 QB 710 Attorney General v. Times Newspapers Ltd. It pertained to a class action by mothers who, when pregnant, had taken the drug Thoredine. Children born to them were deformed as a consequence of the drug. The drug company tried to settle the action. All except five parents agreed. An application was filed in Court to remove, as next friends, the five parents and for the children to be represented through the Official Solicitor. The Court refused the application. The Sunday Times published an article questioning the fairness of the deal of the proposed settlement. Before the second article could be published by the Sunday Times on the issue, the Attorney General issued a writ against the Sunday Times claiming an injunction on the

ground that the comments of the proposed article would prejudice a fair trial. The injunction was refused holding that there was no real and substantial danger of prejudice to the trial. Lord Denning expressed the view in the following words:-

We must not allow trial by newspaper or trial by television or trial by any medium other than the course of law. But in so stating the law, I would emphasize that it applies only when litigation is pending and is actively in suit before the Court, to which I would add that there must appear to be a real and substantial danger of prejudice to the trial of the case or to the settlement of it. When considering the question, it must always be remembered that besides the interest of the parties in a fair trial or a fair settlement of the case there is another important interest to be considered. It is the interest of the public in matters of national concern, and the freedom of the press to make fair comment on such matters. The one interest must be balanced against the other. There may be a case where the subject matter is such that the public interest counter balances the private interest of the party. In such cases the public interest prevails. Fair comment is to be allowed.

22. In the opinion published as 1974 AC 273 *Attorney General v. The Times Newspapers Ltd.* the House of Lords overruled the decision of Lord Denning and granted the injunction holding that if a publication would prejudice the issue in pending proceedings, the injunction must follow. And many are of the opinion that the law declared by Lord Denning has been overturned by the House of Lords, an opinion which is incorrect, for the reason the concurring opinion penned by Lord Reid, Lord Morris, Lord Diplock, Lord Simon and Lord Cross took the same legal view as was taken by Lord Denning; but differed in its application from Lord Denning on facts.

23. "Gagging injunctions" as was the expression used by Lord Denning were discussed by Lord Reid in the following words:-

The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant.

24. Lord Diplock used the expression:-

That the due administration of justice requires first that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to the legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a Tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in Courts of Law; and thirdly that, once the dispute had been submitted to a Court of Law, they should be able to rely upon there being no usurpation by any other person of the function of that Court to decide it according to law.

25. Lord Simon emphasized:-

The first public interest involved is that of freedom of discussion in democratic society. People cannot adequately influence the decisions which affect their lives unless they can be adequately informed on facts and arguments relevant to the decision. Much of such fact-finding and argumentation necessarily has to be conducted vicariously, the public press being a principal instrument. This is the justification for investigative and campaign journalism. Of course, it can be abused - but so may any thing of value. The law provides some safeguards against abuse; though important ones (such as professional propriety and responsibility) lie outside the law.

26. Lord Cross had the following to observe:-

The due administration of justice is something which all citizens, whether on the left or the right or in the center, should be anxious to safeguard. .... We should be careful to see that the rules as to contempt do not inhibit freedom of speech more than is reasonably necessary to ensure that the administration of justice is not interfered with.

27. We may only note that on facts, the five Law Lords concurrently held that the proposed publication was by way of pre-judging issues of fact and of law and therefore would be interfering with the administration of justice.

28. In paras 14 and 15 above, we have highlighted that prejudice by a publication would be in two categories : which tend to impair the courts impartiality or which prejudice the court's ability to determine the true facts. With reference to impartiality of the Court being impaired, we have noted that this would be either by commenting on the character of the accused or by publishing alleged confessions by the accused for the reason a fact may be conveyed to a Judge which would have evidentiary value but which a Judge should not be receiving or by commenting on the merits of the case. Thus, with respect to publications, which would include television shows, one must be careful to see as to in which of the three categories by which the impartiality of the Court could be impaired does the offending publication fall; and needless to state if the offending publication does not fall within any of the three categories the question of the same tending to impair the Court's impartiality would not even arise and likewise with respect to publications which are alleged to be likely to prejudice the Court's ability to determine the true facts, it must be clearly brought out as to how said ability to determine the true fact would be prejudiced. By training, Judges develop the instinct not to be easily influenced by publications.

29. Merely because a publication pertains to a Court proceeding one should not rush to a conclusion to opine prima facie that it either tends to impair the impartiality of the Court or affects the ability of the Court to determine the true facts. One has to carefully see the nature of the publication and find out : Whether keeping in view the content of the publication there appears to be a real

and substantial danger of prejudice to the trial of a case.

30. One more important factor to be kept in mind. If a public figure is involved in a litigation and the matter pertains to the affairs of the State, the right of the public to be informed of the evidence led at the litigation having a bearing on how the public figure discharged the fiduciary duty while conducting the affairs of the State would have to be given primacy over the interest of the individual, for the reason those who enter public life and enjoy the perks of the State would be accountable at a higher level of probity and would be subject to a higher level of public gaze and scrutiny.

31. With the aforesaid legal principles in mind we would note that the respondents, Vidya Dhar, Sher Singh Badshami and Om Prakash Chautala, the last being a former Chief Minister of the State of Haryana, filed a suit seeking to injunct the appellant from telecasting the television programme "CRIME PATROL DASTAK : HARYANA TEACHER RECRUITMENT SCAM" pleading that the three have been convicted for offences punishable under various sections of the penal code as also the Prevention of Corruption Act 1988. The trial pertained to recruitment of 3206 Junior Basic Trained Teachers. A conspiracy was alleged. Various witnesses deposed at the trial. Documentary evidence was led, and indeed it was found that there was gross abuse of power by respondent No. 3 in manipulating the selection. There are no averments in the plaint as to the position held at the relevant time by respondents No. 1 and 2; who joined as co-plaintiffs. It is pleaded that appeals have been preferred by the respondents and applications seeking suspension of sentence would be considered by a learned Single Judge of this Court on April 04, 2013. It is pleaded that telecast of the programme would have an immediate and prejudicial impact on the rights of the respondents. But, in what manner there would be a prejudicial impact has not been pleaded.

32. The plaint presumes that the very fact of telecasting the programme, which we are given to understand is a dramatic version of the evidence led at the trial and hence already in public domain, would cause prejudice.

33. Referring to the development of law on the subject of publications vis-?-vis court proceedings and after considering the decisions reported as Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others, , 1973 AC 273 (House of Lords) Attorney General v. Times Newspapers Ltd., D.N. Prasad Vs. Principal Secretary to the State of A.P. (Home and Courts) and Others, , Shri Surya Prakash Khatri and Another Vs. Smt. Madhu Trehan and Others, , Sahara India Real Estate Corporation Ltd. and Others Vs. Securities and Exchange Board of India and Another, , (2004) EWCA Civ 1462 Greene v. Associated Newspapers Ltd., Khushwant Singh and Another Vs. Maneka Gandhi, , Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others, and Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, , the learned Single Judge has opined that freedom of the Press and its right to publish is sacrosanct and cannot be violated and at the same time the

right of an accused to a fair trial, unblemished by media reporting, is equally important.

34. Discussing the approach to reconcile the two competing interests, the learned Single Judge has opined in paragraph 10 that only where the plaintiff is able to demonstrate substantial risk of prejudice to the pending trial alone would the plaintiff be entitled to an injunction. Thereafter, in para 11 the learned Single Judge has observed as under:-

11. In view of the law as laid by the Supreme Court as noted above, and having regard to the entire factual matrix and particularly the plaintiffs having preferred an appeal against their conviction and which is subjudice in this Court, I am of the view that balancing interest demands that at least till such time the applications of the plaintiffs seeking suspension of their sentence as also the bail, are adjudicated by this Court, they need to be saved from any condemnation by the media. Though, I am conscious of the rights of the media as also of the public, but, at the same time, it cannot be forgotten that after the conviction and sentence of the plaintiffs and their co-accused, there was law and order problem in the court complex where their conviction and sentence was pronounced. The plaintiff Mr. Chautala was the Chief Minister of Haryana, which is not only a neighbouring State, but a good amount of population of Delhi consists of migrants from Haryana. Further, it is common knowledge that after the pronouncement of the conviction of the plaintiffs, the news was reported extensively in all the newspapers and the channels, and by and large, the public is aware of the entire episode. There does not appear to be that urgency in the information that is sought to be telecasted by the defendant, of which, the public would be deprived of.

35. Suffice would it be for us to note that having correctly noted the legal position in paragraph 10 of the impugned order, the learned Single Judge has not even discussed whether the respondents had prima facie been able to demonstrate a substantial risk of prejudice when application seeking suspension of sentence would be taken up for consideration by a learned Single Judge of this Court. The reasoning of the learned Single Judge is that balancing interests demands that at least till such time the application filed by the respondents seeking suspension of sentence is adjudicated by the Court the respondents need to be saved from condemnation by the media.

36. In the absence of any prima facie finding that the plaintiffs had been able to demonstrate a substantial risk of prejudice, the question of balancing the interests as has been done by the learned Single Judge would not even arise for consideration. In fact, the balancing of interest has to be with reference to the right of the media to tell and the right of the citizens to know vis-?-vis the right of the accused and the fulcrum of the balancing being : "Demonstrable substantial risk of prejudice," and not the financial interest of the Broadcaster vis-?-vis the right of the accused.

37. The learned Single Judge has not even viewed the proposed programme, much less read the transcript thereof. Unless the same was viewed and the transcript read, it would be impossible to find out whether the publication made comments on the merits of the case or upon the character of the accused for the reason trial is over resulting in a conviction being sustained. Witnesses have spoken. Documents have been proved. The evidence is in public domain. The broadcast claims to be a dramatic description of the documentary and ocular evidence. Whether or not the presentation commented on the merits of the case could only be determined after viewing the proposed programme and reading the transcript.

38. We, in appeal, read the transcript of the proposed telecast which is in two parts and saw excerpts of the proposed telecast. Since we are dealing with an order granting an ad-interim injunction and detailed hearing has yet to be conducted by the learned Single Judge, lest prejudice is caused to either party, we do not discuss the nature and character of the telecast and the transcript but would simply observe that prima-facie no derogatory words impinging upon the character of the respondents have been used and that the nature of the programme as also the content of the transcript does not prima-facie reveal merits of the case being discussed. Of course, reference has been made to the evidence when the characters speak i.e. the dialogue is a reflection of the evidence, or to put it differently, the transcript of the evidence has been given a dramatic effect.

39. The appeal is allowed. Impugned order dated February 22, 2013 is set aside.

40. The usual mantra. Nothing said by us would be treated as an expression on the merits of the case. The application seeking interim injunction would be decided by the learned Single Judge uninfluenced by any observations made by us on the factual aspect of the matter. Reference to the facts made by us are limited for purposes of discussing the legal issue which arose with respect to the grant of the ad-interim injunction. No costs.