

(2014) 04 DEL CK 0217
In the Delhi High Court
Case No : C.S. (OS) No. 881 of 2014

Naveen Jindal and Another		APPELLANT
	Vs	
Zee Media Corporation Ltd. and Others		RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 19 19(1)(a) 19(2)
Penal Code, 1860 (IPC) — Section 120B 384 466 468 469
Specific Relief Act, 1963 — Section 38

Citation : (2014) 209 DLT 267

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : A.M. Singhvi, Rajiv Nayar, Mr. T.K. Ganju, Mr. J.P. Sengh and Mr. N.K. Kaul, s, Mr. Sanjiv Kapoor, Mr. Rajat Jariwal, Mr. Sumeet Batra, Ms. Ankita Gupta, Mr. Rajeev Goyal, Mr. Aakash Bajaj and Mr. G.L. Sharma, for the Appellant; Aman Lekhi and Mrs. Prathiba M. Singh s, Mr. Tejveer Singh Bhatia, Sudeep Chatterjee and Mr. Varun Kumar Tikmani, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Shali, J.

I.A. No. 5690/2014

1. This order shall dispose of an application of the plaintiff under Order 39 Rule 1 & 2 CPC for grant of pre-telecasting stay against the defendant in a suit for permanent/mandatory injunction and damages. Briefly stated the facts leading to the filing of the present suit are that the plaintiff is a two-time Member of Parliament from the Kurukshetra Lok Sabha constituency in Haryana and is contesting election for the third time from the same constituency. He is the Chairman of the plaintiff No. 2 company known as M/s. Jindal Steel & Power Limited. It has been stated that plaintiff No. 1 is a man of myriad talents having a high sense of patriotism, commitment, responsibility, dedication, honesty,

integrity, sincerity and passion in doing all his activities. He is the youngest of the four brothers and child of an industrialist and philanthropist politician, late Sh. Om Prakash Jindal and Smt. Savitri Devi Jindal. He has enumerated his various achievements in academics, public, social service and extra-curricular field in the plaint in detail in order to show that he is a man of great standing in the society. His immediate grievance is that the plaintiff is having a running feud with defendant No. 1, M/s. Zee Media Corporation Ltd., a company which is having its registered office at Continental Building 135, Dr. Annie Besant Road Worli, Mumbai.

2. The defendant No. 1 is engaged in the business of broadcasting news and entertainment and owns several channels including Zee News, Zee Business Channel and Zee New UP which are 24x7 news channels having wide broadcasting and viewership all across India as well as abroad. The defendant No. 1 is also stated to be having websites which disseminates news and views on several issues. It is alleged that total viewership of the said channels is Rs. 3,54,10,000/- which comprises of 13.3% of the total viewership of all other news channel. Similarly, Zee Business is also alleged to have a viewership of Rs. 1,09,50,000/- which comprises of 4.1% of all the business news channel.

3. The defendant No. 2, Sameer Ahluwalia, is the Editor and Business Head of M/s. Zee Business and defendant No. 3, Sudhir Chaudhary, is the Editor & Business Head of Zee News Channel while as defendant No. 4, Vasindra Mishra is the Business Head of Zee Regional Television.

4. It has been alleged by the plaintiff that the officers of the Zee Media Corporation Ltd., namely, defendant No. 2 and some other officers like Subhash Chandra, Chairman and Puneet Goenka, Managing Director had been in the past attempting to blackmail plaintiff No. 1 on account of the alleged role of plaintiff No. 1 in getting allotment of coal blocks which were under the scrutiny of the CBI. It was alleged that defendant No. 1 and its officers apart from ones who are not party herein had allegedly demanded a sum of Rs. 100 crores from the plaintiffs in the form of advertisement contracts and aired a false news report on the basis of a forged CAG report because of which the plaintiffs laid a trap against them and subsequent thereto, two FIRs under Sections 384/511/120B IPC and also under Sections 466/468/469/471 read with Section 120B IPC were got registered and are pending investigation at Delhi. It has been alleged that because of these registration of FIRs, the defendant No. 1 and its office bearers, namely, defendant Nos. 2 to 4 are having mala fide intentions and have unleashed a campaign of vilification on their news channel by making false, vicious and pernicious allegations with a view to defame the plaintiffs. It is alleged that these allegations were made with a view to wreck vengeance and vendetta by the defendants against the plaintiffs. It was alleged that these allegations which were aired by the defendants in their news programme between 1.3.2014 to 24.3.2014 were per se defamatory and were repeated 131 times against the plaintiffs which not only affected the sentiments of a particular

community and caste but were also done with a view to damage the prospect of the plaintiff in getting elected to the Parliament in the ensuing elections. It is alleged that in these telecasts, false allegations were made against plaintiff No. 1 that he is a liar, proved corrupt, tainted engaged in illegal and unethical trade and business practices and did not deserve to be given ticket by the party on whose ticket he was contesting. It was alleged that on account of this malicious propaganda of the defendants against the plaintiff, it was essentially aimed at influencing and impairing the minds, decision making process of a normal prudent person while casting his or her vote in a manner in which he may deem fit.

5. In order to deal with these allegations which were levelled against plaintiff No. 1, it may be pertinent here to refer to the allegations which have been reproduced by the plaintiff, are as under:-

? Congress candidate Naveen Jindal during his campaign for 3rd inning had to face brunt of the people. The Member of Parliament could not give any answer when some people confronted him with the frauds going on since 10 years and his inability to fulfil the promises made at the time of election.

? When people asked him as to why he has not fulfilled the promises made by him and people expressed their anger in regard, then netaji became angry and started blaming the people. His security guards also misbehaved with the people. Jindal went to the extent of saying Ok don't vote for me.

? You will be shocked to see Naveen Jindal caught in an imbroglio with the people of Kurukshetra which is his own constituency. But this is true.

? The people of Kumhar community were voting for him on this very condition.

? But see the high headedness of the Member of Parliament that he even went to the extent of saying them that they should not vote for him. If you do not believe, then listen to this. In the meanwhile, the security guards of Jindal not only misbehaved with the public but they also pushed aside all those who came to complaint.

? The entire Kumhar community is extremely unhappy and rather angry on hearing such words from the mouth of their own Member of Parliament and the treatment given to them by the security guards of Jindal. They are at a complete loss to understand as to what was their fault whether it is a crime to ask question from their own Member of Parliament who is a liar.

? Naveen Jindal could not tolerate this behaviour of theirs and you can see the manner in which he has misbehaved with the members of prajapat community.

? Thereafter when he tried to raise his point in the workers meeting them he was misbehaved and ignored and the body guards pushed him aside. Such kind of attitude has left a totally negative impact on the prajapati community.

? Several of our correspondents have joined us. We will gather information from

them and will discuss on this issue.

? Generally, whenever a leader goes to public, he listens to the grievance of the people and he should talk with the people in a very polite manner. But it is not so in this case. The security guards of Jindal highly misbehaved with the local people. You can feel the impact of such an incident.

? History is a witness that whenever a minor spark has risen from any area of Haryana the same has always turned into a massive demonstrations. Whether it is the demonstration of JP or of Jat community or of transport employees or of farmers. Such agitations always emerge in the form of small sparks and turn into a monstrous demonstrations. The witness to this is the incident of yesterday. The members of Prajapat community are not confined only in the areas of Kurukshetra or gulachika alone but it is spread throughout Haryana in vast numbers. In Sonapat also, there are large members of this community. Voters of prajapat community play a significant role in Haryana and in this case Naveen Jindal has succeeded in reaching Lok Sabha twice due to these Kumhars. But his conduct towards them shows nothing but his high-headedness and the downfall of a person always starts from such conducts. He has started his own doom. Now it depends upon the members of the Kumhar community to make its future plans for the coming Lok Sabha Elections.

? All this will definitely leave a negative impact.

? You have seen the incident which has happened with a particular community. If we see the whole incident, we clearly find the high-headedness of Naveen Jindal.

? He is undoubtedly a very high-headed person and it actually shows somewhere or the other. You can see his attitude towards employees of his own company with whom they are talking.

? The every effect of this defeat in the coming elections is now clearly visible on the face of Naveen Jindal and in his speeches.

? Even otherwise, the attitude of Naveen Jindal is like this. Whenever we ask any question from him, he shows his high headedness. Earlier also, he had done exactly the same with our camera during a discussion with him. He had jerked the camera when our reporter tried to ask a question from him. His conduct is visible in the public also. He will have to pay for his attitude.

? Public also knows how to reply the anger. Public has only one power with them which is their vote and you have seen this for yourself in the recent elections of Delhi Assembly. Now when the elections are very near, then public will definitely give its reply which will cause sleepless nights to several leaders. Public will give its fitting reply to Jindal Sahib by means of voting.

? Frustration is self evident. He has won twice from this constituency and now he is here for the third time. Such a conduct on his part with the public just before the elections can cause a huge loss to the Congress party in the entire Haryana.

We are receiving inputs that this prajapat community is spread in entire Haryana and it is a very strong community and that several other communities are also attached with this community.

? But is he absolutely unafraid of the results. High command has given him a free hand to deal with the public in the manner he wants.

? Someone will definitely question his attitude. Public will not tolerate such kind of conduct. Public will give its representative through voting and the results of Lok Sabha elections will definitely show the negative impact in the Kurukshetra. You have just seen the conduct of one kind. The candidate will have to bear the brunt for his conduct at every cost.

? It is natural that he will have to bear the brunt for his attitude. What do you think?

? You must know how to talk with the public when you go to them before the elections. Public will definitely ask question from you when you fail to fulfil all those promises of developments which you had made at the time of last elections. Specially your volunteer who is widely advertising for you and whatever he is saying before the people, will be the same position with all the workers and such a situation will become the biggest problem.

? His mines in Bhilwara has been cancelled or is likely to be cancelled while as he has no mines.

6. The above quotes are the reproduction of the comments and interview of the reporters of defendant No. 1 which, in the view of plaintiff No. 1, are per se defamatory. It is these allegations or comments which are telecasted by the defendants on as many as 131 occasions between a span of 15 to 20 days which show that they have unleashed campaign of vilification.

7. This matter was received in the court in the afternoon on special mention to the Judge Incharge (Original side) on 26.3.2014. Incidentally, Mrs. Pratibha M. Singh, the learned senior counsel with Ms. Saya Chaudhary Kapoor had put in appearance on behalf of defendant No. 1 and contended that it is by chance that they learnt about the present suit having been filed and, therefore, they may be given a copy of the plaint along with necessary annexures and documents so as to enable her to obtain instructions. The matter was adjourned to 27.3.2014. On 27.3.2014, Mrs. Pratibha M. Singh, the learned senior counsel stated that she is appearing for defendant Nos. 2 to 4 while as Mr. Aman Lekhi, the learned senior counsel along with Mr. Tejveer Singh Bhatia appeared for defendant No. 1. The learned counsel sought time to place on record the documents in order to show that the allegations made by the plaintiff in the plaint which are said to be actuated on account of mala fide reasons with a view to spoil the election prospect of the plaintiff No. 1 are totally false, frivolous and unwarranted. It was sought to be contended that the reporting which was done by defendant No. 1 in its telecast was bona fide and was justified and constitutes a fair comment on the

conduct of the plaintiff. The matter was adjourned to 28.3.2014 as they had handed over the court a bunch of papers in order to justify their stand and the learned counsel for the plaintiff wanted to have a look at the said documents. Arguments were heard in part on 28.3.2014 in the afternoon. Dr. A.M. Singhvi, the learned senior counsel for the plaintiffs raised the following submissions:-

a) The first and foremost submission of Dr. Singhvi has been that the telecast done by the defendant on its prime time TV news channel and business channel has been actuated by mala fides on account of the fact that the plaintiff has been able to expose the design of the defendant to blackmail the plaintiff in demanding Rs. 100 crores for the purpose of not reporting or telecasting about the so-called alleged illegal allotment of coal mines to the plaintiffs. It has been stated by Dr. Singhvi that because of this action on the part of the defendants, two FIRs have been registered and there have been number of actions initiated both civil as well as criminal by the plaintiff against the Zee Media Corporation Ltd. as well as its officials. It was stated that Sunil Chaudhary was the editor who was arrested also and remained behind the bars for almost a month before he was enlarged on bail and, therefore, the entire exercise of painting the plaintiff with such false, frivolous defamatory per se allegations were essentially done with a sense of vendetta of wreck vengeance on the plaintiff. Dr. Singhvi contended the sustained campaign of vilification which was started by the defendants can be gauged by the fact that between 5.3.2014 to 24.3.2014, the news items, the contents of which have partially been reproduced in writing in the petition have been repeated almost 131 times. The very fact that these have been repeated almost 131 times over a period of 15-20 days clearly shows that the entire exercise on the part of the defendant has been to influence the prudent reasonable voter to presume against plaintiff No. 1 as if he was some kind of demon who did not deserve to contest or get elected for the third term.

b) Dr. Singhvi, the learned senior counsel has also drew the attention of the court to the still frames of the telecast to urge that the false and per se defamatory reporting and the telecasting is being done by the defendants. In this regard, he drew the attention of the court to these templates to contend to show that the entire kumbhar community and prajapat community was against plaintiff No. 1. It was contended that entire community can never be against one particular individual much less against plaintiff No. 1 and even if he is able to show a single person belonging to the aforesaid community favouring plaintiff No. 1 that would clearly show that the reporting and the telecasting being done by the defendants was totally false.

c) It has also been contended that the falsity of charges against plaintiff No. 1 is also reflected from the fact that in one of the public meetings and incident where a person wanted to ask certain question from plaintiff No. 1 in his individual capacity, the plaintiff No. 1 had said to that person/fellow/questionist that he should meet him in his office there only plaintiff No. 1 would be able to respond to his queries. When the said person insisted that he must get the reply from

plaintiff No. 1 there and then only that Naveen Jindal, plaintiff No. 1, told him that he need not vote for him.

d) It has been contended by Dr. Singhvi that this dialogue between the querrist and plaintiff No. 1 has been falsified to allege and show on telecast that the public especially kumbhar community need not vote for him. This misstatement is not only false to the knowledge of the defendants but is telecasted purposely with a view to damage his election prospects. Similar are the episodes pertaining to prajapat community. Thus, in sum and substance, it has been stated by Dr. Singhvi that by these vicious and pernicious campaign of vilification on the part of the defendants clearly shows a hostile animus to damage the election of plaintiff No. 1.

e) It has been contended by Dr. Singhvi that the plaintiff has no other alternate efficacious remedy available to him although he had approached the election commission and complained about the matter to them who in turn have referred the same to News Broadcasting Standards Authority (in short "NBSA") who have demanded reply from the defendants within a period of 15 days. It has been contended that the guidelines of NBSA for election reporting have been violated though the said violation will be dealt with separately by NBSA but that can never constitute to be an alternative efficacious remedy available to the plaintiff and, therefore, he has been forced to seek redressal of his grievance by filing the present suit for permanent injunction in which he is praying for "pre-telecasting stay" against defamatory material against plaintiff No. 1.

f) Dr. Singhvi has also relied upon the following judgment in support of his contentions:-

? Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and Another,

? Bata India Limited vs. A.M. Turaz & Others; I.A. No. 18245/2012 in C.S. (OS) No. 3010/2012 was not pressed as it was set aside by the Supreme Court.

8. Mr. Aman Lekhi, the learned senior counsel appearing for defendant No. 1 has contended that no restraint order deserves to be passed against the defendants as the telecasting which is done by defendant No. 1 and its other channels is in exercise of its paramount right of freedom, speech and expression which is guaranteed under Article 19(1)(a) of the Constitution of India and which can be subjected to a reasonable restriction only on the subjects which are envisaged under sub-clause (2) of Article 19, namely, sovereignty and integrity of India, 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.

9. Since in the instant case, the plea of the plaintiff does not fall in any of the clauses of sub-clause (2) of Article 19 of the Constitution, therefore, he is not entitled to a protection by this court. It has also been contended that the public at large has a right to know about the credentials of its proposed representative

as well as also qua him with regard to the work which he has done in the light of the promises and assurances given to his electorate in the last five years.

10. Mr. Lekhi, the learned senior counsel for defendant No. 1 has also contended that the reporting and the telecasting which has been done by defendant No. 1 has a valid justification and constituting even in the domain of fair comment and if that be so then there cannot be a restraint on defendant No. 1 or its telecast of the reports as has been sought to be done by them. It has been stated that the defendants are prepared to face the consequences of its actions if they are found to be defamatory rather than the telecast being curtailed by passing a "pre-telecast restraint order" against them.

11. Ms. Pratibha M. Singh, the learned senior counsel appearing for defendant Nos. 2 to 4, apart from supporting the submissions made by the learned senior counsel for defendant No. 1, has also taken the plea that there is a justification for publishing the news item. It has been stated that there is no malice or mala fide, it is only a make belief allegation made by the plaintiff to obtain an order in its favour.

12. Before dealing with the issues raised by the learned counsel for the parties, it may be pertinent here to refer to the respective judgments relied upon by the learned senior counsel.

13. The learned counsel for the defendants and the plaintiffs have referred to the judgment of Tata Sons Limited Vs. Greenpeace International and Another, VThe relevant paras are reproduced as under:-(para 28 and 29)

28. The English common law precedent on awarding interim injunctions in cases of defamation is set out by the case of *Bonnard* (supra). In *Bonnard* it was decided that an interim injunction should not be awarded unless a defence of justification by the defendant was certain to fail to trial level. The Court's observations, widely applied in subsequent judgments are as follows:

The subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of the free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with granting of interim injunctions.... In the particular case before us, indeed, the libelous character of the publication is beyond dispute, but the effect of it upon the Defendant can be finally disposed of only by a jury, and we cannot feel sure that the defence of justification is one which on the facts which may be before them, the jury may find to be wholly

unfounded; nor can we tell what may be the damages recoverable.

Again, in *Fraser v. Evans*, [1969] 1 QB 349 Lord Denning MR stated the law as follows:

The Court will not restrain the publication of an article, even though it is defamatory when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since *Bonnard V. Perryman*. The reason sometimes given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a Judge. But a better reason is the importance in the public interest that the truth should out.....There is no wrong done if it is true, or if [the alleged libel] is fair comment on a matter of public interest. The Court will not prejudice the issue by granting an injunction in advance of publication. ...

xxxxxxxxxxxxxxxxxxxxxxxx

29. From the above reasoning, it follows that the Court will invariably not grant an interim injunction to restrain the publication of defamatory material as it would be unreasonable to fetter the freedom of speech before the full trial takes place, where each of the parties can argue in detail with the help of additional evidence. Similarly, in this matter, it is incumbent upon this Court to decide whether it would be reasonable to fetter the reasonable criticism, comment, and parody directed at the plaintiff, which to a large extent is protected by the Constitutional guarantee to free speech, to all the citizens of India. This point of view was also strengthened by a recent challenge to the old common law rule of *Bonnard* in the case of *Greene v. Associated Newspapers Limited*, 2005 (1) All. ER. 30, where it was decided that if it is a known fact that the true validity of the defamation claims will only be tested at trial level then it would only be appropriate for the court not to award an interim injunction to the plaintiffs as it would otherwise put an unreasonable burden on the concept of free speech.....

xxxxxxxxxxxxxxxx

30. That said, English common law has not completely abandoned the needs of a complainant in a case for defamation. *Woodward vs. Hutchins*, 1977 (1) WLR 760 and *Fraser* (supra) taken together propounded that when an interim injunction is denied to the plaintiff, he may pursue a claim in damages against the defendant; this if the plaintiff has a reasonable belief that his name and status has been defamed.....

xxxxxxxxxxxxxxxxxxxxxxxx

31. This Court is also bound to follow the *Bonnard* principle, further for the reason that in *Khuswant Singh*, a Division Bench had noticed and followed it although in a slightly different context, i.e., assertion of privacy and defamatory matter in the publication. Nevertheless the *Bonnard* rule, as noted in *Fraser* and *Woodward* was applied. The Court is bound by precedent to defer it *Khushwant*.

14. Ms. Pratibha M. Singh, the learned senior counsel for defendant Nos. 2 to 4 has taken the court through the paragraph No. 24 reproduced in the plaint wherein the plaintiff No. 1 is alleged to have been referred to be a tainted person. It has been stated that if one reads carefully the said paragraph, what has been stated in the same is that Rahul Gandhi was in the company of tainted persons which included Ashok Chavan, Vijay Darda and Naveen Jindal, therefore, "taint" refers to Rahul Gandhi and not to "Naveen Jindal", plaintiff No. 1. It has been contended that even if it is assumed that the word "taint" is referred to Naveen Jindal, namely, plaintiff No. 1, it is not the word coined by the defendants but it is a word used by other news agencies also disseminating the news. In this regard she has handed over in court the website reporting of rediffusion.com as well as Indian Today website wherein the aggrieved MP, Naveen Jindal, who happens to be the head of the tainted company has been referred to as such. In any case, it has been contended by the learned counsel that the word "taint" is in no way defamatory or vicious. The learned senior counsel Ms. Pratibha M. Singh has also referred to the judgment of Khushwant Singh and Another Vs. Maneka Gandhi, Delhi 58 to urge that it was held in the said judgment as under:-

59.....The question thus to be considered is the effect of such prior publications on the claim made by the respondent in respect of these publications. There is force in the submission of the learned counsel for the appellants that not only was there wide publicity about these aspects in view of the same relating to the then first family of the nation but the respondent possibly drew strength from the media to put forth her point of view against what she claimed was the injustice meted out to her by her late mother-in-law.....

XXXXXXXXXXXXX

.....The respondent did not make grievance about the reporting of their disputes in the press. The nature of controversy was more or less the same as is now sought to be published by appellant No. 1 in his autobiography and thus the respondent cannot make a grievance of the same matter now being published so as to seek prevention of the published so as to seek prevention of the publication itself. The silence of the respondent and her not making a grievance against the prior publication prima facie amounts to her acquiescence or at least lack of grievances in respect of publication of the material. Needless to add that the remedy of damages against the appellant is still not precluded in so far the respondent is concerned.

60. The right to publish and the freedom of press, as enshrined in Art. 19(1)(a) of the Constitution of India is sacrosanct. This right cannot be violated by an individual or the State. The only parameters of restriction are provided in Art. 19(2) of the Constitution of India. The total matter of the book is yet to be published, including the chapter in question. The interim order granted by the learned single Judge is a pre-publication injunction. The contents of subject matter had been reported before and the author stands by the same. In view of

this, we are of the considered view that the respondent cannot make a grievance so as to prevent the publication itself when the remedy is available to her by way of damages. We are not examining the statements attributed to appellant No. 1 on the touchstone of defamation. It would not be appropriate to do so for us at this stage but what we do observe is that the statements are not of such a nature as to grant injunction even from publication of the material 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 are analysed by the trial court.

61. It is no doubt true that the reporting of the matter is controversy in the prior publication does not make them public documents as held by the learned single Judge of this Court in Phoolan Devi's case (supra).....

15. It was contended that in the instant case, the entire matter being within the public domain, therefore, no pre-publication interim order (which is in the nature of pre-telecasting order) needs to be issued in favour of the plaintiffs on the ground that the same was within the public domain and that being so, the right to freedom of speech and expression would get violated.

16. Dr. Singhvi, the learned senior counsel for the plaintiff has tried to distinguish the Khushwant Singh's case (supra) on the ground that the facts of that case were totally different from the facts of the present case. It has been contended by him that in Khushwant Singh's case (supra), the essence as to why the pre-publication restraint order got vacated was on account of the fact that the allegations which were made against Maneka Gandhi, the respondent in the said case because the Division Bench was of the opinion that the allegations which were alleged to be published or likely to be made by Khushwant Singh in his book were already in the public domain as they were printed in different newspapers, articles or books or magazines and the details of these incidents were reproduced in the judgment to show that though the case had arisen in the year 2002 but these were within public domain right from 1982 onwards and if because of such publication, the respondent/defendant did not feel aggrieved at that point of time, there was hardly any occasion for her to feel aggrieved because of the publication of such an allegation or alleged defamatory articles or information in the book of Khushwant Singh. Accordingly, the said restraint order was vacated by the Division Bench. It was contended that the facts of the said case were totally different from the present case.

17. Ms. Pratibha M. Singh, the learned senior counsel appearing for defendant Nos. 2 to 4 has also placed very strong reliance on the judgment of this court in Charanjit Singh Vs. Arun Purie and Others, wherein the learned single judge has observed that the plaintiff in the said case was a member of Parliament and he being a public servant, therefore, he could not complain about the allegations which may be allegedly defamatory in his view to be made by the respondent in the said case but was or which may be causing annoyance to him. The learned single judge while holding such a view has relied upon one English judgment and

has observed as under:-

17. The plaintiff admittedly is a Member of Parliament. He is a public man. In Catley on Libel and Slander, 8th Ed., para 88 it is observed:

Those who fill public positions must not be too thin-skinned in reference to comments made upon them.

One who undertakes to fill a public office offers himself to public attack and criticism; and it is now admitted and recognized that the public interest requires that a man's public conduct shall be open to the most searching criticism.

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

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 the misunderstood for a time". (Per Cockburn, O.J. in "Seymour vs., Butterworth" (1862) 3 F & F 372 (376, 377) (A) and see dicta of the Judge's in "R.V. Sir R. Cardan", (1879) 5 Q BD 1(E). "Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though unpleasant, appendage to his office (Per Bramwell, D., in "Kelley vs. Sherlock", (1866) 1 Z.B. 686 (689) (C). Public men in such position 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.

18. I am also of the considered opinion that the view which has been taken by the Hon"ble Mr. Justice Sultan Singh in S. Charanjit Singh's case (supra) which is based on the view of the Apex Court in Kartar Singh's case (supra), is a more balanced view on account of the fact that a public person or a person holding a public office should not be so "thin skinned" or should be rather "thick skinned" so as to complain about the allegations or the averments or the write ups which are taking place against him in the media or are being telecast unless and until they are grossly defamatory per se. The publications may be inaccurate, not fully or substantially true or may be distorted or may be offending sensibilities of the person against whom such allegations are made or may be to his annoyance but that is not to be the ground to muzzle them altogether.

19. It is more so in a case when a person, holder of a public office or aspiring to become a member of an elected body is amidst the din of electioneering. It is a common knowledge that while the elections are on, all kinds of accusations and counter-accusations are bound to fly thick and fast in all directions of which a person must not complain unless and until the allegations against him are per se defamatory.

20. Coming back to the allegations which have been complained about by the

plaintiff in the instant case, I do not prima facie find that except that there may be incorrect statements or inaccurate statements which are made by the defendants in its televised reporting or which may be not to the liking of the plaintiff or which may be causing annoyance to him are not per se defamatory. The best course is to ignore such inaccurate reporting rather than raise an objection because by the latter course, you are giving it more importance which exactly the opposite party wants.

21. I have gone through each and every part of the allegations or comments allegedly made by the defendants against the plaintiffs but that cannot be said to be per se defamatory. To list this, I refer to few allegations. The para which referred to the word "taint" is actually having reference to Rahul Gandhi and not to plaintiff No. 1. Similarly, with regard to non-owning of mines in Bhilwara, sufficient documentary evidence has been placed on record along with news reports which shows his business interest in Bhilwara. Therefore, there cannot be a minute dissection of these comments, allegations and reports at this stage except to take a plain view on reading to see as to whether they are defamatory or not. This view of it being defamatory has already been answered by me in negative.

22. The plea of the learned senior counsel Dr. Singhvi that such pernicious, vicious and inaccurate reporting is going to change the mind of the electorate qua the plaintiff, in my considered opinion, is not correct. The functioning of an anarchical looking like election process in the past almost four decades has shown that an Indian voter may be rustic, illiterate or unfed but he is fully aware for whom he must exercise his voting right. Therefore, I feel that the argument advanced by Dr. Singhvi that such reporting is going to influence the outcome of the results of elections vitally qua plaintiff No. 1 is unconvincing. It is a common knowledge that while the elections are on, such things are bound to occur and if the plaintiff if he is so sensitive and thin skinned then he ought not to have taken a rough and tough path of being elected to the representative body. I, therefore, feel that this complaint by the plaintiff is not about the allegations made against him which are per se defamatory in any manner whatsoever.

23. There is another aspect of the matter or in other words, there is another fundamental rule which has to be observed by the court while granting a stay of this nature. Section 38 of the Specific Relief Act clearly lays down that while granting temporary injunction if there is a method of quantifying damages which a person may suffer because of non-grant of such an injunction then injunction ought not to be granted. In other words, as a matter of rule anything which is complained of which can be measured in terms of money and for which money can be adequate compensation by way of a final relief, can never be injuncted. In the instant case, the plaintiff is complaining that he is being defamed while as the defendants are taking the plea of justification which is a valid defence and a fair comment meaning thereby they stand by the allegations made by them against the plaintiff necessarily meaning that this requires adjudication by the

court to arrive at a finding whether the allegations levelled by the defendants against the plaintiff are defamatory or not. If they are held to be not defamatory then the suit is liable to be dismissed if the accusations against the plaintiff are held to be defamatory then he is certainly entitled to damages which he can quantify and show to the court.

24. Therefore, in such a contingency at this stage to restrain the defendants from pre-telecasting of the programme or the news article or the reporting would not only be a gagging right to freedom of press but also gagging of the public to know about a candidate who is sought to be elected by its electorate.

25. I am cognizant of the fact that it is not unusual in a given case where a pre-publication restraint order has been passed by this court although both the parties have not cited the judgment of Swatanter Kumar vs. The Indian Express Ltd. & Others passed by this court in C.S. (OS) No. 102/2014 on 16.1.2014 in which a pre-publication restraint order was passed against reporting his name or photograph and without giving his side of the story but the facts of that case were slightly different than the facts of the present case. In the said case, the plaintiff was a former Judge of the Supreme Court and present holder of a position of Chairman of an important tribunal. Further, by virtue of his holding of a past office and the present one, he was under an obligation not to have publically refuted the allegations made against him which is unlike in the case of a person who has been a sitting MP on two occasions and is aspiring to get elected for the third time where he has ample opportunity to address the public, hold a press conference, give his side of the story despite the fact that the guidelines of the NBSA also laid down that in such cases where they are reporting about the accusations, televising agency must give the views by the aggrieved party also. Therefore, so far as the judgment of former judge Mr. Justice Kumar is concerned, that is totally distinguishable from the facts of the present case.

26. Coming to the question of alternative remedy having been invoked by the plaintiff as is sought to be urged by the learned senior counsel for the defendants, I am of the view that merely by approaching to the Election Commission who in turn have send the complaint of the plaintiff to NBSA, does not tantamount to having approached to an alternative remedy. In any case, he has not gone himself to NBSA, it is only the Election Commission which has send the complaint of the plaintiff to NBSA who have sought to obtain views of the defendants on the said complaint within a period of 15 days. By the time 15 days period would be over, the substantial portion of electioneering would be over and the polling which is to take place on 10.4.2014 would be fast approaching and almost nearing the said date, therefore, that remedy can by no stretch of imagination can be stated to be an alternative remedy. In such a contingency, I feel mere pendency of the complaint with the Election Commission or NBSA would not be a ground to non suit the plaintiff. It may be pertinent here to refer to the guidelines of the NBSA which are relied upon by the plaintiff in support of

their contention:

i. Guidelines on Broadcast of Potentially Defamatory Content

.....6. As a norm, a news channel should not report-live or recorded-any statement that is per se derogatory or derisive.

8. Before reporting any accusation or allegation the version of the person affected must be obtained and aired simultaneously with the accusation or allegation to give a complete picture to the viewer. In the event of inability to obtain the version of the affected person(s) within a reasonable period, the same should be aired simultaneously and authentic contemporaneous records of the effort made should be maintained.

9. Before broadcasting any such news/programmes, the channel must take necessary steps to ascertain its veracity and credibility.

.....

ii. Guidelines for Election Broadcasts

The purpose of the following guidelines is to ensure that broadcast of news and current affairs programmes and all other content on a news channel pertaining to elections and election related matters is fair and balanced, that is being objective, accurate and duly verified:

1. News broadcasters should endeavour to inform the public in an objective manner, about relevant electoral matters, political parties, candidates, campaign issues and voting processes as per rules and regulations laid down under The Representation of People Act 1951 and by the Election Commission of India.

3. News broadcasters must endeavour to avoid all forms of rumor, baseless speculation and disinformation, particularly when these concern specific political parties or candidates. Any candidate/political party, which has been defamed or is a victim of misrepresentation, misinformation or other similar injury by broadcast of information should be afforded prompt correction, and where appropriate granted an opportunity of reply.

7. Special care must be taken to ensure that every element of a news/programmes dealing with elections and election related matters is accurate on all facts relating to events, dates, places and quotes. If by mistake or inadvertence any inaccurate information is broadcast, the broadcaster must correct it as soon as it comes to the broadcaster's notice with the same prominence as was given to the original broadcast.

27. The NBSA has already framed guidelines and in the instant case though the defendants are making allegations which may not constitute per se defamatory accusations but nevertheless they do not seem to be allegations which have some bearing in the minds of the public at large which constitute electorate pending within the Parliamentary constituency of plaintiff No. 1. Therefore, in

order to balance the equities, the defendants ought to have obtained the view of the plaintiff also and simultaneously telecasted the said view also along with the news item or the news reporting or televising all the incidents.

28. Keeping in view the aforesaid facts, I feel that although the plaintiff is not entitled to any blanket pre-telecast restraint order against the news reports as is sought to be carried by the defendants in its telecast but the plaintiff is certainly entitled to invoke guidelines of NBSA reproduced above which obligates that the defendant while conducting their programmes, reporting, televising or interviewing various persons must also obtain the views of the affected person or the view of his authorized representative and the same be reflected simultaneously along with the said reporting. I feel that will meet the ends of justice.

Conclusion

29. In the light of the aforesaid observations, I hold that the plaintiffs have not been able to satisfy that they have got a prima facie good case or that balance of convenience is in their favour or that they will suffer an irreparable loss, accordingly, the plaintiffs are not entitled to any blanket pre-telecast order against the defendants; however, keeping in view the guidelines of the NBSA, the defendants are directed to obtain the view of plaintiff Nos. 1 and 2 in case they intend to televise any programme pertaining to plaintiff No. 1 or his companies so that the said interview, comment or his side of the story is simultaneously reflected at the end of the said programme.

30. With these directions, the application of the plaintiffs is treated as disposed of. Expression of any opinion hereinbefore shall not be treated as an expression on the merits of the case. Dasti.