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**(1987) 09 BOM CK 0067**

**In the Bombay High Court**

**Case No :** Appeal No. 957 of 1987 in Chamber Summons No. 370 of 1987

Nishi Prem

APPELLANT

Vs

Javed Akhtar and others

RESPONDENT

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**Date of Decision :** 19-09-1987

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 6

**Citation :** (1987) MhLj 1073

**Hon'ble Judges :** M.P. Kenia, J; M.L. Pendse, J

**Bench :** Division Bench

**Advocate :** Soli J. Sorabjee with Aspi Chinoy, Virag V. Tulzapurkar and V.S. Nadkarni instructed by M/s. Wadia Chandi and Company, for the Appellant; Indira Jaising with Anand Grover for Respondent No. 1, Sashi Jain, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.M. Pendse, J.—This is an appeal preferred by original defendant No. 3 against the order dated July 14, 1987 passed by the learned Chamber Judge directing defendant No. 3 to disclose on affidavit the names of persons to whom the reference is made under the article written by defendant No. 3 and published in the issue of April 1987 of magazine "Star Dust". The facts relevant for the purpose of understanding the controversy in this appeal are as follows :

2. The defendant No. 3 has written an article under the title "Queer Quartet" and the article is published in April 1987 in the magazine and the article relates to the plaintiff and his wife who is a film artist. The plaintiff claims that the article is per se defamatory and the statements and suggestions made in the article are false to the knowledge of defendant No. 3. The article is published in a film magazine which is published in three languages : (1) English, (2) Hindi, and (3) Gujarathi and defendant No. 2 is the editor of the magazine. We refrain from setting out the contents of the article save and except observing that the author claims that she had over-heard certain conversation at a gathering and

thereafter made enquiries with various people in the film industry as well as the members of the Unit of a Film "Mr. India". The article quotes what was told to the author by these people. The plaintiff claims that the author of the article had concocted fictitious facts out of her fertile imagination and reference to fictitious persons in the industry and the Unit was made only to lend credibility to the article. The plaintiff also claims that the defendants made no efforts to ascertain the truth of the contents of the article from the plaintiff. The article sets out that one of the persons who furnished the information was defendant No. 5. The plaintiff instituted suit on March 30, 1987 for a decree for damages amounting to Rs. 25,00,000/- with incidental reliefs.

3. The plaintiff took out Chamber Summons No. 370 of 1987 for a direction to the author of the article to disclose on affidavit the names of "Starwife", "Industrywalla", "Industrywallis", and "Unitwalla" of film Unit of "Mr. India" referred to in the article. The affidavit filed in support of the Chamber Summons by the plaintiff on April 9, 1987 sets out that the author of the article should be directed to disclose the names to enable the plaintiff to make the proceedings more effective and complete and to substantiate his case. It further recites that the plaintiff is interested in suing the persons who are alleged to have made statements to the author of the article and to add them as party defendants to the suit.

In answer to the Chamber Summons, defendant No. 3 filed an affidavit on June 3, 1987 and it is claimed that the statements made in the article are substantially true and correct and the expression of opinion are fair comments on a matter with which the public is concerned. It is further claimed that an application for discovery by interrogatories to obtain the disclosure of the names of the persons who gave information to defendant No. 3 is made with the object of suing them and that object is improper and constitutes abuse of the process of discovery. The defendant No. 3 claims that she should not be compelled to disclose the names of persons who will be probably called as witnesses at the trial of the action. It is further stated that revelation of the names would be unfair and unjust to the persons concerned and would amount to breach of confidence and would be contrary to the professional ethics of the writer. The defendant No. 3 asserts that it is a settled practice that discovery by way of interrogatories should not be ordered against a publication which deals with matters interesting to a large number of the public. The application made by the plaintiff, claims defendant No. 3, is an effort to discover the evidence which the defendants propose to adduce in support of their claim and the disclosure is sought with a view to enable the plaintiff to intimidate the defendants' witnesses by threat of action.

4. The learned Chamber Judge, by the impugned order, negated the contentions raised by defendant No. 3 holding that the question as to whether the comments referred to in the article were made or not and, if made, by whom, is directly relevant and disclosure of names is also relevant for

establishing malice. The learned Judge further held that though the plaintiff has a complete cause of action against the present defendants, the direction for disclosing the names should be given to enable the plaintiff to make the proceedings more effective and complete and to substantiate the claim. The learned Judge referred to the "newspaper rule" prevalent in England for over a century but observed that there are vital Constitutional and Social interests which may have to be balanced against the protection extended to a newspaper and there cannot be any hard and fast rule that the newspaper should not be compelled to disclose its source of information. The learned Judge held that the article written by defendant No. 3 does not disclose any information which can be said to be of public importance or of public interest and, therefore, the disclosure of names is directly material to the plaintiffs case. The order passed by the learned Judge is under challenge.

5. Mr. Jaising, learned counsel appearing on behalf of respondent No. 1, raised a preliminary objection to the maintainability of the appeal. The learned counsel urged that the order passed by the Chamber Judge is in exercise of powers under Order XI, Rule 1 of the CPC and this order is not appealable under Order XLIII of the Code of Civil Procedure. Mr. Sorabjee, learned Counsel appearing on behalf of the appellant, controverted the submission by pointing out that the effect of non-compliance with the direction given by the Chamber Judge under Order XI, Rule 1 of the CPC is that the defence would be struck out under Order XI, Rule 21(1) apart from other remedies which the plaintiff may adopt for non-compliance of the order. Order XI, Rule 21(1) enables the Court to strike off the defence and proceed with the suit as if undefended in case the party fails to comply with the orders to answer interrogatories. The order of striking out the defence under Order XI, Rule 21 is appealable under Order XLIII, Rule I(f) of the Code of Civil Procedure. Mr. Sorabjee submits and, in our judgment, with considerable merit that the consequences of non-compliance with the direction of the learned Chamber Judge are serious and the defendant would be completely shut out from defending the suit and, therefore, the appeal should be held maintainable. It is undoubtedly true that the right of appeal is a creation of statute but it cannot be overlooked that it is not necessary for a party against whom an order is made under Order XI, Rule 1 of the CPC to wait for challenging that order till a consequential order of striking out the defence is passed. In the present case, the defendants have not yet even filed the written statement. In our judgment, it would be very technical to deny the right of appeal to the aggrieved party against whom an order of disclosure which has a serious repercussion is made. There is also another facet of the matter which cannot be overlooked. Clause 15 of Letters Patent enables a party aggrieved by the order of the Single Judge to prefer an appeal before a Division Bench of this Court provided the order appealed against is a judgment within the meaning of Clause 15 of the Letters Patent. The question as to which orders amount to a judgment came up for consideration before the Supreme Court in the case of *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, and it was held that whenever a trial Judge

decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of Letters Patent. The Supreme Court observed that in finding out whether the order is a judgment, it is necessary to ascertain whether the order affects the merits of the action between the parties by determining some right or liability. Applying the test laid down by the Supreme Court, it is obvious that the order passed by the Chamber Judge fastens liability against defendant No. 3 to disclose the source of information and this liability affects valuable rights of defendant No. 3. The appeal is, therefore, maintainable under Clause 15 of the Letters Patent and the preliminary objection raised on behalf of respondent No. 1 is required to be repelled.

6. Mr. Sorabjee, learned Counsel appearing on behalf of defendant No. 3, submitted that the object of the application for discovery was to obtain the names of the informants who would be probably the appellant's witnesses, and then to prevent them from deposing under the threat of legal action and such object is entirely impermissible and the Chamber Judge should have refused the relief to the plaintiff. The learned counsel urged that it is not permissible to compel the party at a stage prior to the trial to disclose the evidence. It was urged that the desire to ascertain the names of the persons who disclosed information to defendant No. 3 is with an object to file action against them and that being the primary object for seeking interrogatories, the Chamber Judge should have turned down the request. The learned counsel submitted that in the case of newspapers, it is a settled practice in England that source of information is not directed to be disclosed by interrogatories at an interlocutory stage and this rule which is known as "newspaper rule" is consistently followed in the cases of libel and slander. Mr. Sorabjee submitted that there is no reason why the same rule should not be applied in this country. Mr. Jaising, learned Counsel appearing on behalf of the plaintiff, on the other hand, submitted that the object of seeking disclosure of the names is certainly to take action against them but such disclosure is also necessary to enable the plaintiff to substantiate the claim made in the plaint. The learned counsel urged that the contention that the disclosure of names amounts to seeking a list of witnesses to be examined on behalf of the defendants is not correct because the persons referred to in the article are not mere witnesses but are wrong doers or tortfeasors along with defendant No. 3. It was also contended by the learned counsel that the disclosure is essential to enable the plaintiff to establish that the article was written by defendant No. 3 with malicious intention and that would enable the plaintiff to seek higher quantum of damages. It was urged that the newspaper rule is not an absolute rule and even if the rule is applied in this country, it should be made available only in cases where the publication is in public interest. The article complained of does not satisfy the requirement and, therefore, defendant No. 3 should not be allowed to seek protection under the newspaper rule.

7. Order XI, Rule 1 of the CPC prescribes that in any suit the parties by leave of the Court may deliver interrogatories provided that the interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant,

notwithstanding that they might be admissible on the oral cross-examination of the witness. This rule is enacted to enable the parties to know the nature of the opponent's case, but the rule does not entitle the party to ascertain the facts which constitute exclusively the evidence of the other side, the reason being that it would liable unscrupulous parties to tamper with the witnesses of the other side and to manufacture evidence in contradiction and so shape his case as to defeat justice. In cases where the plaint or written statement does not necessarily disclose the nature of the case, then interrogatories are administered to make good the deficiency. Interrogatories can also be administered to obtain admissions from other parties to facilitate the proof of the claim. Order XI. Rule 6 of the CPC provides that the interrogatories may be objected on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit or that the matters inquired into are not sufficiently material at that stage. It is well settled that the parties are not entitled to administer interrogatories for obtaining discoveries of facts which constitute evidence of its adversary's case or title.

The plaintiff has sought disclosure of names with the object of suing those persons or adding them as defendants to the suit and interrogatories administered with this object cannot be granted. It is not in dispute that the cause of action against the defendants is complete and it is not the claim that the plaintiff would not be entitled to get a decree against the defendants in absence of disclosure of source of information. The Court of Appeal in the case of *Edmondson vs. Birch & Co. Limited* reported in 1905 (2) King Bench Division, 523 considered this question and held that the interrogatories put in order to enable the plaintiff to bring an action against persons whose names would be disclosed are not put bona fide and should be declined. An action for libel was brought against a Company carrying on business in London in respect of a cablegram sent by the defendants. On the strength of this cablegram, the plaintiff who was engaged as defendants' representative in Japan was dismissed from employment and the plaintiff brought action complaining of the cablegram as libellous. The plaintiff applied for leave to administer the interrogatories, inter alia, seeking information as to from whom the information was derived by the defendants. The Master allowed the interrogatory, and on appeal, the Judge affirmed the order, but the Court of Appeal reversed that decision and Lord Justice Rooker held that interrogatory was sought with an illegitimate motive as the plaintiff was really seeking to assert a right of action against some person other than the defendants and was not making the enquiry bona fide for the purpose of the action already instituted. The learned Judge held that the Court would be acting wisely in not allowing the interrogatory seeking the names of the persons from whom the information was derived by the defendants. In a subsequent decision in the case of *Plymouth Mutual Co-operative and Industrial Society, Limited vs. Traders' Publishing Association, Limited* reported in 1906 (1) King's Bench Division 403, which is also an action for libel, the defendants were directed to answer the interrogatories which required the defendants to disclose

the names of persons from whom the information was obtained and which was relied in publishing the expressions of opinion. The defendants objected to answer the interrogatories on the ground that the same is irrelevant and not administered bona fide for any purpose of the suit. It was claimed that the effect of interrogatory was to compel the defendants to give the names of persons who would be their witnesses on the plea of justification and the object is to obtain the names in order to bring action against them. Lord Justice Vaughan Williams held that even though the interrogatory was relevant to the issue raised in the action, the defendants should not be compelled to answer it as it is put for some purpose altogether outside the action, for instance, for the purpose of bringing another action against some other person than the party interrogated. It was held that it would be right to refuse to allow interrogatory when it was plain that the interrogatory was put for some purpose outside the action. In the case of *British Steel Corporation vs. Granada Television Ltd.* reported in 1981 (1) All England Reports 417, Sir Hubert Regarry V-C while delivering judgment sitting in Chancery Division, observed that running through the previous decisions, there are two strands of reasoning for the rule for not forcing to disclose the source of information, one that the process of discovery ought not to be used for the ulterior purpose of enabling the plaintiff to discover the name of someone against whom one could bring another action. We are in respectful agreement with the principle laid down by these authorities. The interrogatories are not delivered to enable the plaintiff to gather cause of action for institution of separate action, which has no bearing to the action already instituted. In our judgment, as the plaintiff clearly asserted in the affidavit in support of the Chamber Summons that the plaintiff is interested in suing the persons whose names would be disclosed by defendant No. 3. The interrogatories should not have been granted.

8. Mr. Jaising submitted that the object of administering interrogatories was not merely to sue the persons whose names would be disclosed, but also with a view to enable the plaintiff to make the proceedings more effective and complete. We are unable to appreciate how the proceedings would be more effective and complete only if " defendant No. 3 is compelled to disclose the source of information. We are in agreement with the learned Chamber Judge that the plaintiff has complete cause of action against the present defendants and it is not necessary for the plaintiff to join those whose names would be disclosed in order to succeed in the present suit. The claim that the proceedings would be more effective and complete only by disclosure of the names is, in our judgment, not correct, because the real object of delivering the interrogatories and the principal and dominant desire of the plaintiff is to sue those persons. It was also contended that one more object in administering the interrogatories was to substantiate the claim. We are afraid that this is not the true object with which the plaintiff approached the learned Chamber Judge. It is the case of the plaintiff that the claim, of defendant No. 3 made in the article that the information was gathered from different persons in the industry and Unit is a figment of imagination and indeed no person has even given any such information to

defendant No. 3. As the plaintiff has come to the Court with a specific case that no person had given any information to defendant No. 3 and the writing suggesting that the information is gathered from different persons is wholly untrue, it is difficult to appreciate how the plaintiff administered the interrogatories with the object of substantiating his case. The object seems to be that in case the defendant No. 3 took up the plea that indeed the information was gathered from the persons and she intends to examine those persons as witnesses at the trial, then the plaintiff should have prior information of the persons who are going to depose. It is, therefore, obvious that none of the grounds made out in support of the Chamber Summons for compelling defendant No. 3 to disclose the source of information are bona fide or relevant for the purpose of suit.

9. Mr. Sorabjee submitted that the plaintiff cannot by this method of administering interrogatories secure the names of witnesses to be examined at the trial from defendant No. 3. The learned counsel pointed out that the interrogatories were administered even before the defendants filed their written statement and the relief sought is really a direction to defendant No. 3 to disclose her evidence and such an attempt should not be permitted. As mentioned hereinabove, a party is not entitled to administer interrogatories for obtaining discovery of facts which constitutes exclusively the evidence of its adversary's case. The defendant No. 3 claims that the statements made in the article are substantially true and correct and defendant No. 3 desires to call reasons who had supplied the information as witnesses at the trial. Mr. Sorabjee, in this connection, referred us to three decisions of the English Court which are on the point. In 1885 (29) Chancery Division 29, an action was brought for a declaration that a piece of land formed part of M. Common, and to establish commonable rights on it. After the defence was delivered, the defendants administered interrogatories and the plaintiff objected to answer on the ground that the particulars demanded forms parts of the evidence which would be adduced at the hearing. Mr. Justice Kay referred to the rule of discovery set out in Wigram's Book on Discovery and observed that there are two things which the plaintiff may not require the discovery of from the defendant; One is the manner in which the defendant's case is to be established, and the other the evidence which relates exclusively to that case. The learned Judge declined to grant part of the interrogatories because they were in effect directed to the discovery of the evidence by which the plaintiffs intended to prove their case at the hearing. In the case of H. W. Stenches fan alleged lunatic ) reported in 1895 (1) Chancery Division 439, a petition for an enquiry of an alleged lunatic was presented, but before the inquisition was concluded, the lunatic died leaving behind two Wills. The brother of the lunatic instituted action for declaration that the two Wills were induced by undue influence by the defendant who was the legatee. The defendant sought permission to inspect the proceedings and the documents presented in the lunacy enquiry and that was objected. Mr. Justice lindley in his Judgment observed :

"In England it is considered contrary to the interests of justice to compel a litigant to disclose to his opponent before trial the evidence to be adduced against him. It is considered that so to do would give undue advantages for cross-examination and lead to endless side issues; and would enable witnesses to be tampered with, and give unfair advantage to the unscrupulous.

It is very true that an honest and fair-dealing litigant, on seeing how strong a case his opponent had, might at once withdraw from further litigation. But our rules of evidence and of discovery are not based upon the theory that it is advantageous to let each side know what the other can prove, but rather the reverse."

The third decision is in the case of Knapp vs. Harvey reported in 1911 (2) King's Bench Division 725, where the action was brought by the plaintiff to recover damages for personal injuries occasioned to him through being bitten by a dog belonging to the defendant. It was alleged in the statement of claim that the dog was of a fierce and mischievous nature, and accustomed to attack and bite mankind, and that the defendant wrongfully kept the said dog well knowing that it was of such fierce and mischievous nature and so accustomed. The defendant traversed the allegations and applied for and obtained an order directing the plaintiff to disclose any specific occasion or occasions on which the dog had bitten a man, woman or a child. The plaintiff delivered the particulars by asserting that the defendant's dog bit a man in Stanford Street in the month of June or July, 1908, and man in Tachbrook Street, Pimlico in the month of July or August, 1908 and on both the occasions, the defendant was verbally informed of the fact. The defendant subsequently applied in Chamber for leave to administer the interrogatories, one of which was what is the name of the person alleged to have been bitten by the dog in June or July 1908 and in July or August, 1908. The Master allowed the interrogatories and the plaintiff subsequently appealed before the Court of Appeal and it was claimed on behalf of the defendant that the defendant is entitled to interrogate the plaintiff as to any facts material to the issues raised in the action, although those facts may not be directly in issue, and it is no objection that the answering of the interrogatory may incidentally involve the disclosure of the name of a witness who will be called by the party interrogated. Lord Justice Vaughan Williams while allowing the appeal held that is plain that the identity of the person is not material to the actual issues in the matter and the defendant wants their names in order that he may make inquiries about them, and, if necessary, may interview them. It was held that where a party in an action is asking for the names of persons who will be witnesses of his opponent, it is necessary to show that the names were relevant for the purpose of establishing some material facts, not necessarily a fact directly in issue, but some fact that is material to the proof of his case. Lord Justice Moulton sounded a warning by observing that one danger to allowing a litigant to obtain information as to the evidence upon which his opponent intends, to rely is that he may in this way find out, not that his opponent's case is untrue, but that his opponent is not aware of some awkward fact or facts, and he may for that

reason be emboldened to persevere with an unrighteous defence. Lord Justice Buckley observed that the argument for the defendant really comes to this, that, if he knew in advance whom the plaintiff was going to call as witnesses, he would be in a better position to meet their evidence and that is an inadmissible contention. Once the conclusion is reached that the object of the interrogatories is to find out what the evidence adduced by the plaintiff in support of his case is going to be, or what witnesses he intends to call, then it follows that the interrogatories cannot be supported. These three decisions, in our judgment, clearly set out the principle that the interrogatories should not be permitted to enable the party to ascertain which witnesses would be examined by the other side at the trial. Mr. Sorabjee is right in his contention that the object of seeking disclosure of source of information from defendant No. 3 is to find out as to whom defendant No. 3 would examine at the trial, and, if possible to reach them. In these circumstances, the interrogatories should not have been administered and the relief sought by the plaintiff should have been denied.

10. Mr. Jaising submitted that the disclosure of names is relevant for the plaintiff to establish that the article was written and published by the defendants with a malicious intention. It was contended that the motive in publishing the article is very relevant to determine the quantum of damages which the plaintiff would be entitled to recover. The learned Counsel urged that in case, defendant No. 3 had no names to disclose, then it would be established that the article was a total figment of imagination and was penned with malice to destroy the reputation of the plaintiff and his wife. Mr. Sorabjee countered this submission by urging that in case the defendants fail to establish their assertion that the contents of the article are substantially true and correct and the expression of opinion are fair comment, then the defendants would be liable to pay the damages and possibly, even the entire claim made by the plaintiff may be decreed, but the question as to whether the article was written with malicious intention or not does not depend upon the disclosure of source of information. The learned counsel relied upon the decision in the case of *Adams vs. Sunday Pictorial Newspapers* (1920) L d. and *Champion* reported in 1959 (1) King's Bench Division 354, where in an action claiming damages for libel, the defendants pleaded fair comment made bona fide on a matter of public interest, making use of what is commonly called the "rolled-up" plea. The plaintiff claimed that the words complained of were published with express malice and leave was sought to administer to the defendants' interrogatories. Interrogatory No. 5 was what steps and/or precautions did you take and what inquiries did you make before publishing the words complained of, or causing them to be published, to ascertain whether the expressions of opinion contained therein were founded on facts. The interrogatory in question was disallowed by the Master and in appeal by Mr. Justice Parker, and the Court of Appeal also turned down the request. Lord Justice Somervell referred to R.S.C., Order 31, Rule 1A which provides that in an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published

on a privileged occasion, then no interrogatories as to the defendants' sources of information or grounds of belief shall be allowed. It will be observed that though the issue of express malice was raised by the plaintiff, the interrogatory comes within the class of interrogatory prohibited by the rule. Lord Justice Denning observed that the burden is on the defendant who pleads fair comment and that is quite heavy enough. Lord Denning further observed that if the plaintiff has any evidence for alleging malice, all well and good, let him call the evidence at the trial; but if he had no evidence, or insufficient evidence, I do not see why the Court should assist him by allowing him to cross-examine the writer about it before the trial.

11. Reference can be usefully made in this connection to the decision in the case of *Pamela vs. Walter and another* reported in 1890 (24) Queen's Bench Division 441, where the contention that the object of the interrogatories could be for disclosure of names so that the plaintiff might be able to show that in making those statements those persons were actuated by malicious motives was turned down by Lord Escher, Master of Rolls. It was observed that to establish that the persons who informed the defendant were malicious does not carry the case of the plaintiff any further and what must be shown is that the defendant was malicious and to show that his informants were malicious is not evidence that he was malicious. In our judgment, the contention of Mr. Jaising that the disclosure of source of information to defendant No. 3 would enable the plaintiff to successfully establish malice at the trial cannot be accepted. Even assuming that the disclosure of names would enable the plaintiff to establish malice, still that is not enough ground to compel defendant No. 3 to disclose the names.

12. Mr. Sorabjee submits that apart from the fact that the relief should not have been granted to the plaintiff on the ground that the interrogatories were not bona fide and irrelevant, there is one more reason why the learned Chamber Judge should have refused to accede to the request of the plaintiff. It was contended by the learned counsel that it is settled practice in England that the press is not compelled to disclose the source of information at an interim stage in an action for libel or slander. The rule known as "newspaper rule" is consistently followed in England for last over a century and there is no reason why the same rule should not be adopted in this country. In support of the submission, learned counsel relied upon the decision reported in 1890 (24) Queen's Bench Division 44 (*Parnell vs. Walter and another*), 1906(1) King's Bench Division 403 (*Plymouth Mutual Co-operative and Industrial Society, Limited vs. Traders "Publishing Association, Limited*), 1920 (1) King's Bench Division, 135 (*Lyle-Manuel vs. Oldham, Limited and others*), 1949 (1) King's Bench Division 729 (*Georgics vs. The Vice-Chancellor and Delegates of the Press of Oxford University*). All these cases were referred to with approval by House of Lords in the case of *British Steel Corp. vs. Granada Television Ltd.* reported in 1981 (1) All England Reports 417 and it would suffice if reference is made to the judgment of Lord Denning delivered in Court of Appeal and which exhaustively deals with the "newspaper rule" on which Mr. Sorabjee placed reliance. In *Granada* case certain

confidential papers relating to internal actions of a Steel Company were leaked out to a Television Company (Granada) and relying on these papers a programme was broadcast during the national strike by the workmen of the Steel Company. The documents showed possible mismanagement within the Steel Company. The Steel Company brought proceedings against Granada seeking an order of disclosure of the informant to enable the Company to identify the informant in order to prevent further misuse and to remove the suspicion directed at those of the staff who had access to the documents. Granada declined to disclose the identity and Sir Robert Megarry overruled the objections while sitting in Chancery Division. Lord Denning while deciding the appeal referred to the "newspaper rule" by observing :

"For well over 100 years it has been a settled rule that, when a plaintiff sues a newspaper for damages for libel, the newspaper will not be compelled to disclose its source of information; at any rate in answer to interrogatories administered in interlocutory proceedings before trial."

After referring to earlier decisions which have been set out hereinabove, Lord Denning observed :

"Sometimes this is put as a rule of practice, on the ground that it is not necessary at the interlocutory stage to discover the name of the informant. At other times it is put as a rule of law, on the ground that the plaintiff has an adequate remedy in damages against the newspaper and that it is not in the public interest that the name of the informant should be disclosed, else the sources of information would dry up. But, whichever way it is put, the court has never in any of our cases compelled a newspaper to disclose the name of its informant, save in the leading case of *Attorney General vs. Muller* (1963) 1 All E.R. 767 where on balance the public interest in compelling disclosure outweighed the public interest in protecting the sources of information."

The matter was carried to House of Lords and the "newspaper rule" was approved. Lord Fraser in his speech observed that the rule applied only to libel actions and at the interlocutory stage of discovery. The reasons for the rule are obscure and it has sometimes been held that the name of the informant was irrelevant. Lord Fraser referred with approval to an Australian case of *Me Guinness vs. Attorney General for Victoria* reported in (1940) 63 CLR 73 wherein it was observed :

".....a special exception is made in favor of publishers, proprietors and editors of newspapers as defendants in actions of libel from the general rule that discovery by affidavit of documents and answers to interrogatories must be made of all relevant matters. By a long line of cases a practice is recognized of refusing to compel such a defendant to disclose the name of the writer of an article complained of as a libel or of the sources of information he has relied upon. The foundation of the rule is the special position of those publishing and conducting newspapers, who accept responsibility for and are liable in respect of

the matter contained in their journals, and the desirability of protecting those who contribute to their columns from the consequences of unnecessary disclosure of their identity."

Lord Fraser further pointed out that since 1949, R.S.C. Order 82, rule 6 applied the same rule to all defendants irrespective of the fact whether defendant is newspaper or not. The decision of House of Lords makes it clear that the newspaper rule grants protection from disclosure of source of information at the interlocutory stage in action for libel. The only departure made in England was in the case of *Zululand* where a witness was compelled to disclose source of information before a Tribunal constituted for ascertaining as to how certain secret information relating to the National Security was leaked out to the newspaper.

13. Mr. Jaising submitted that there are two American decisions where the newspaper rule prevalent in England was not accepted. Reference was made in the case of *Judy Garland vs. Marie Torre* reported in (1958) 250 F2-d 545. The reliance on this decision is not very accurate. Judy Garland, an actress, brought action against Columbia Broadcasting System for allegedly false and defamatory statements made concerning her by a "network executive" of the broadcasting system, according to newspaper columnist in newspaper. The Columbia Broadcasting System claimed that though the statements appeared in the column, the system had not given any information. The plaintiffs counsel then took deposition of Marie Torre, the newspaper columnist, who claimed that the statements in the columns were in exact words, statements which had been made to her over telephone by Columbia Broadcasting System. Marie declined to give the name of the informant as it would violate the rule of confidentiality. Separate proceedings were then initiated in the District Court to compel her to disclose the name and those proceedings were challenged as violative of constitutional protection guaranteed by the First Amendment, on the ground that the recital interest is in assuring a free and unrestricted flow of news to the public and compelling disclosure would defeat that interest. The learned Judge held that the judicial process is not used to force a wholesale disclosure of the newspaper's confidential sources of news, nor with a case where the identity of the news source is of doubtful relevance or materiality. The learned Judge felt that the question asked to Marie Torre went to the heart of the plaintiffs claim and, therefore, Marie Torre had no right to refuse an answer. Marie Torre was not a defendant in an action instituted by Judy Garland against broadcasting system and Marie Torre declined to answer the question as a witness and, therefore, this case cannot be relied upon to contend that there is departure from the newspaper rule followed in England for over a century. Reference was also made to the decision in the case of *United States vs. Parl Caldwell* reported in *United States* 408, 33 L Ed. 626 where a newsman called upon to identify before a grand jury the individuals he had seen possessing marijuana and making hashish therefrom. The newsman filed a petition objecting to summons directing his appearance before a grand jury investigating narcotics violations. Considering the question as to whether the First Amendment accords a newspaper privilege

against appearing before a grand jury and answering questions as to identity or source of information which he had received in confidence, the Supreme Court held that before a newsman is asked to appear before a grand jury and reveal confidence, the Government must show probable cause to believe that the newsman has information clearly relevant to a specific probable violation of law, and that the information cannot be obtained by alternative means. In our judgment, this case does not assist the plaintiff in suggesting that the United States Supreme Court had departed from the newspaper rule prevalent in England. The protection sought was not at an interlocutory stage of the trial nor in an action for libel or slander, but in criminal proceedings. Reference was made by Mr. Jaising to the decision in the case of Secretary of State for Defence and another vs. Guardian Newspapers Ltd, reported in 1984 (3) All England Reports 601 where a memorandum, classified "secret" prepared by the Ministry of Defence relating to the installation of nuclear weapons was leaked by unknown informant to the defendants' newspaper which subsequently published it. The Crown requested the return of the Photostat copy so that it could attempt to identify the informant from markings made on the document. The defendant declined and relied upon Section 10 of the Contempt of Courts Act, 1981 which provides that the person is not required to disclose the source of information contained in a publication unless it is established to the satisfaction of the Court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime. The matter went right up to the House of Lords and Lord Diplock in his speech referred to the construction of Section 10 of the Contempt of Courts Act, 1981 and observed that choice of what information shall be communicated to members of the public lies with the publisher alone; it is not confined to what, in an action for defamation can be regarded as matters of public interest, or even going down the scale, information published in order to pander to idle curiosity and thus promote sales of the publication. Relying on this observation, it was contended that the protection is not available in case of publications which are published in order to pander to idle curiosity and are nothing but wild gossip. We fail to appreciate how the decision relied upon would advance the claim of the plaintiff. The case of Guardian Newspapers Limited as well as Granada's case were not cases arising out of action for libel but were proceedings which were instituted only for the purpose of seeking the information as to who had disclosed the secret information. In view of the decision in the case of Norwich Pharmacol Co. and others vs. Commissioners of Customs and Excise reported in 1973 (2) All England Reports 943, it is open for a party in England who has been injured by wrong-doer to bring an action to discover the name of the wrong-doer and this is popularly known as "Norwich rule". The action instituted under Norwich rule is only for ascertaining the name of the wrong-doer and these proceedings cannot be compared to the interrogatories administered by the plaintiff under Order XI, Rule 1 of the CPC in an action instituted for recovery of damages from the defendants on the ground of publication of a defamatory article.

14. We wish to make it clear that we are not examining the larger issue as to whether the newspaper is entitled to the privilege at the time of final hearing of the suit and we specifically leave that question open for hearing at the trial. We are not examining that question because it does not fall for our consideration in the present proceedings. At this juncture, the ambit of our enquiry is restricted to whether the newspaper should be compelled to disclose the source of information at an interlocutory stage and we have no hesitation in holding that the newspaper rule which is followed in England for over a century should be applied and newspaper should not be compelled to disclose the source of information at an interim stage in answer to the interrogatories. In our judgment, the plaintiff was not entitled to any relief in the Chamber Summons both on the ground that the interrogatories were misdirected, irrelevant and for an object which was entirely outside the ambit of the suit and on the ground that the defendant No. 3 was entitled to the protection of the newspaper rule. We are unable to share the conclusion of the learned Chamber Judge that the disclosure of names asked for is directly material to the plaintiffs case. It was urged on behalf of the plaintiff that the disclosure is necessary in the interest of justice and, more so, when the publication of article was malicious and was not a matter of public interest. It was urged that the plaintiff is entitled to a right of privacy and the character of the plaintiff cannot be permitted to be destroyed by violent and false allegations published by the newspaper. The argument overlooks that the defendant No. 3 has come out with the claim that the contents of the article are substantially correct and the expression of opinion are fair comments on a matter with which the public is concerned. It is not possible to express any opinion on the rival claims of the parties at this stage and disclosure of source of information cannot be directed merely because the article is not in good taste. The decision as to whether interrogatories should be administered and disclosure should be directed cannot depend upon the alleged strength of the rival claims, but must be determined on the basis of statutory provisions under Order XI, Rule 1 of the CPC and the principles evolved by the Courts. The impugned order cannot be sustained on this touchstone and the plaintiff is not entitled to the relief sought.

15. Accordingly, the appeal succeeds and the impugned order dated July 14, 1987 is set aside and the Chamber Summons No. 370 of 1987 is dismissed. In the circumstances of the case, the parties will bear their respective costs.

At this stage, Mr. Jaising orally applies for a certificate to file an appeal before the Supreme Court under Article 133 of the Constitution of India. Leave refused.