
(1994) 12 DEL CK 0048

In the Delhi High Court

Case No : Interim Application No. 7930 of 1994 and Suit No. 2000 of 1994

Phoolan Devi

APPELLANT

Vs

Shekhar Kapoor and Others

RESPONDENT

Date of Decision : 01-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 21

Citation : (1995) 57 DLT 154 : (1995) 32 DRJ 142

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

Bench : Single Bench

Advocate : Indira Jaising, Parveen Anand, K. Pratibha, A.H. Desai, D.N. Sawhney and Ashok Gumani, for the Appellant;

Judgement

Vijender Jain, J.

(1) This is an application by the plaintiff under Order 39 Rules 1 and 2 of the CPC seeking restraint order against the defendants from exhibiting publicly or privately ,selling, entering into film festivals, promoting, advertising, producing in any format or medium, wholly or partially ,the film "Bandit Queen" in India or else where. Another prayer is made for appointment of a Receiver/Court Commissioner to take custody and charge of the original negatives, intermediate negatives, positives in all gauges, magnetic audio tapes, mixed audio tapes, sales and publicity material relating to the film "Bandit Queen".

(2) The case of the plaintiff on this application is that on 9.9.94 this Court directed the original version of the film as made and produced on a video cassette be filed within a week. In compliance of the same the cassette was filed by the defendants. Another order was made that day directing the defendants not to exhibit the film for public as well as private viewing in India. The parties have filed voluminous documents on record. Ms.Jaisingh at the outset has argued that the plaintiff has not been shown rough or final edited version of the film till date despite her repeated demands orally and in writing. The learned counsel for

the plaintiff has argued that though defendant no.3 kept assuring the plaintiff that he would show her the film made on her life story but instead of showing the film to the plaintiff on 9.8.94 there was a private screening of the film "Bandit Queen" at Siri Fort Auditorium, New Delhi. In the application the plaintiff has given names of some of the important persons who watched the screening of the said film. According to the plaintiff the film started with the legend "This is a true story". Mr. Jaisingh has argued that exhibition of the film as made is in breach of right to privacy. She has further contended that apart from its being violative of right to privacy of the plaintiff the defendant has no right to make the film and exhibit for public viewing as has been agreed to between the parties by virtue of the agreement dated 11.5.88. Agreement dated 11.5.88 is between Anancy Films Limited, i.e. defendant no.5 and the plaintiff. The letter reads as under:-

"RE:Documentary - The Chambal Valley This letter sets out the agreement we have reached and will, when signed by you, constitute a binding contract between us. 1. We intend (but do not undertake) to research make and produce a film relating to Indian Banditry and your role therein ("the Film") for exploitation on the television and in other media throughout the world. 2. You have written certain material concerning your life (all of such written material is herein together referred to as "the Writings"). 3. In consideration of our agreement hereby made to pay the sum of rupees one lakh (One Hundred Thousand) half payable on receipt of the Writings, half to be paid on the first day of principal photography, you hereby (i) Grant to us the sole and exclusive right to use and reproduce the Writings or any part or parts thereof in connection with and as part of cinematograph films (including the Film) and all allied rights for the full period of copyright including all renewals and extensions thereof and thereafter as the same may be or become possible in perpetuity. (ii) Agree that we may cut or alter and adapt the Writings and use them alone or with other material and/or accompanied by narration and/or editorial comment....."

(3) Thereafter defendant no.5 assigned the rights in the written material and diaries "The Writings" to Channel 4 by virtue of the arrangement between Channel 4 and Anancy Films Limited. Channel 4 is defendant no.3. Ms.Jaisingh has argued that as per the agreement defendants wanted to make a documentary on the Chambal Valley and banditry. In the agreement in paragraph I, it has been mentioned that what the defendants were to make and produce was a film relating to Indian Banditry and plaintiff's role therein. Another important clause which will be relevant for disposing of this application is Clause (3) of the agreement which, inter alia, stated that as the plaintiff has written certain material concerning her life of all such written material would be referred as "The Writings" and the defendants got the sole and exclusive right to use and reproduce writing or any part or parts thereof and that the plaintiff and the defendants also agreed that the defendants may cut or alter and adapt the Writings and use them alone or other material and/or accompanied by narration and/or editorial comment.

(4) Learned counsel for the plaintiff has drawn my attention to a legal notice sent by the lawyer on behalf of the plaintiff dated 6.2.1993 wherein she has pointed out to defendant no.2 that the book written under the title "India's Bandit Queen" does not contain the true facts. The facts written in the said book are not true. They are twisted and misrepresented and if the film is produced based on the false facts enumerated in the book it shall result into hatred between the two communities and their associates. She has further stated in the notice that she expected the film to be made in the light of true facts and any display contrary or in contravention of the true facts shall be against the spirit of the agreement and contract would be void. Ms.Jaisingh has further contended that as per the agreement between defendants and the plaintiff though the defendants had the right to cut, alter or adapt from the original writings of the plaintiff but it does not give them a right to distort or virtually depict on the screen which was not written or admitted by the plaintiff. In this connection she has specifically stated few instances which have been shown in the film but are not based upon the writings of the plaintiff, nor find mention attributed to the plaintiff by defendant no.4 in her book India's Bandit Queen". The first in the sequence is "Behmai Massacre" in which, according to the plaintiff she was not present at the place of occurrence. At page 150 of the book which is stated to be the basis of making the film under Chapter 17. the following paragraphs are important:-

"PRESS reports about the "Behmai Massacre" vary, adding much fiction and fantasy to fact. Some details, however, are beyond dispute. It was 14 February 1981 and twenty two Thakur men were gunned down in cold blood, at almost point-blank range. Twenty died and two survived. They had been lined up along the bank of Jamuna River, ordered to kneel and were then shot in the back, in a thunder of bullets that resounded in the village where their mothers, wives and children cowered in doorways. Sri Ram and Lala Ram were not among the bodies found, by the river. In her statement to the police at the time of her surrender, Phoolan Devi says she was not there, that she was on the banks of the Betwa River with some members of her gang, keeping watch. She adds: "Some of the members of the gangs that were in Behmai were asked when arrested whether Phoolan had been involved in this massacre and they have said that I was not with them at the time." The officer who recorded this statement on 20 February 1983, Police Inspector R.N. Gupta, then based in Bhind with the CID's Anti Dacoity squad, added a note to the end of it which reads: "Phoolan Devi has denied any involvement in the Behmai massacre but her companion, Man Singh, has confirmed his involvement in his statement."

(5) She has further contended that the plaintiff is facing the murder charges and as many as 49 cases are pending against her and if it is shown that she was present at the time of the killing of 20 Thakurs at Behmai it will create bias in the minds of Judges and that would be interference in the course of judicial administration and if that is allowed to be done the defendants shall be committing an act of contempt under the Contempt of Courts Act. In her support she has cited Shamim Rehmaney Vs. Zinat Dehalvi and Others, , State Vs. Kamla

Ram Nautiyal and Others, and J.C.Shah v. Ramaswami and A.N.Grover]]. Air 1969 Sc 649. Ms.Jaisingh has also contended that depicting of Behmai Massacre in the film will incite communal hatred and it will effect the peace and harmony between Thakurs on the one hand and the lower castes to which the plaintiff belongs on the other. Apart from this Ms.indira Jaisingh has also argued that screening of such scenes would jeopardise and endanger the life and liberty of the plaintiff as after seeing the film some one from the upper caste may try to wreak vengeance on the life of the plaintiff.

(6) MS.JAISINGH has further argued that in the film plaintiff as a child has been shown as being raped by her husband. It is further argued that the plaintiff has stated that she has never stated so in her writing nor anywhere in the book. Similarly, she has stated that in the film it has been shown that the police has raped her but even in the book of Mala Sen which is the basis of production of the film what she has stated is "UN Log Ne Mere Sath Kafhi Mazaak KI - Khub Mara BHI" (they had plenty of fun at my expense and beat the hell out of me too). Even in her own narration defendant no.4 has stated that it is not unusual for women all over the world, and particularly in India, to resist discussing the sexual abuse they have been subjected to, surrounded as they are by a society that holds them responsible for the acts of violence against them and taints them with self-images of weakness and impurity. The learned counsel for the plaintiff has also stated that a graphic detail of sexual intercourse with the plaintiff has been shown in the film "Bandit Queen" when Babu Gujar rapes the plaintiff. Ms.Jaisingh has contended that the plain tiff never admitted that she was raped by Babu Gujar, nor in the whole book anything to that effect has been stated to have been said by the plaintiff. The whole scene in the film is based on fiction. Similarly, she has quoted the incident of plaintiff being gang raped and paraded naked in Behmai by Sri Ram and Lala Ram and has invited the attention of this Court at page 125 of the book "India's Bandit Queen" that what has been written at page 125 was not on account of the writings of the plaintiff but on account of a report by an American Journalist who wrote an article for Esquire and, Therefore, that scene and details have been incorporated incorrectly and against the agreement between the parties. Similarly, in the film "Vikram Mallah" the plaintiff indulging in sexual intercourse in Kanpur does not find mention in the book written by defendant no.4 nor it is on the basis of present diaries.

(7) Ms.JAISINGH has also contended that as a matter of fact the script which was written by the defendant was to be approved by the Government of India and as a matter of fact she has argued that the defendant has deviated from the said script and that is why they have not filed the script as approved by Government of India as the Govt. of India also did not agree with the depiction of "The Behmai Massacre" the way the defendant tried to portray in the film. She has also submitted that defendant has acted in a reckless manner as the plaintiff never talked about the rape but still she has been shown time and again being raped in the film. Counsel for the plaintiff has also invited my attention to page xxiii of the book written by defendant no.4 to the following effect: -

"UNABLE to read or write herself, she had dictated her story to a variety of people who can put pen to paper. I refer to these writings as her prison diaries. In addition I have communicated with her in other ways - by letter, by chance meeting - over a period of three to four years....."

(8) On the basis of the narration in the books, the prison diaries and the agreement, learned counsel for the plaintiff has argued that the defendant has no right to show the plaintiff being raped on the scene in Behmai Massacre as it would be inconsistent with the true story of the plaintiff as well as against the terms of the contract. Ms.Jaisingh has also argued that in any event the portrayal of plaintiff in such scene would offend her right to privacy and in this context she has cited R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, . Ms.Jaisingh has further argued that present reports are not public documents under the provisions of Indian Evidence Act. She says that public documents are only those documents which are defined under Sec.74 of the Indian Evidence Act as well as Public Records Act, 1993. In support of her contention that right to privacy is earnest right to live with dignity and has cited in her support State of Maharashtra and another Vs. Madhukar Narayan Mardikar, and Mrs. Neera Mathur Vs. Life Insurance Corporation of India and another, . Another contention raised by the learned counsel for the plaintiff is that the law as well as the public policy is to keep anonymous the identity of the rape victims and in her support she has cited Delhi Domestic Working Women's Forum Vs. Union of India (UOI) and Others, . She has also invited attention of this Court to the provisions of Sec. 228A of the Indian Penal Code and has contended that the policy of law is to protect the identity of the" victim of rape. Ms.Jaisingh has further contended that that spirit can be found from the enactment of "Indecent Representation of Women Prohibition Act; 1986". " Another argument advanced by learned counsel for the plaintiff is that after the enactment of National Human Rights Act, 1993, Sec. 2(d) defines "Human Right" and Article 17 of the Covenant of "Human Right" which has been incorporated by virtue of the enactment of the National Human Rights Act gives recognition to the right to privacy as one of the basic human rights which nobody can violate. Yet another argument advanced by the learned counsel for the plaintiff is that the writings of the plaintiff are protected by virtue of Sec. 57 of the Indian Copy Right Act and in her support she has cited Mannu Bhandari Vs. Kala Vikas Pictures Pvt. Ltd. and Another, :-

"WHAT is the substance of the protection of special rights guaranteed by Sec. 57? Sub-cl, (a) of Cl.(I) of the Section prohibits any distortion or mutilation of the author"s work. The words "other modification" appearing in the sub-cl.(a) will have to be read ejusdemgeneris with the words "distortion" and "mutilation". The modification form of the work looks quite different work from the original. "Modification" in the sense of the perversion of the original, may amount to distortion or mutilation. But, there can be a modification implicate such as where "A" is changed to "B", both being quite distinct. Sub-cl, (a) thus provides inviolability to an intellectual work. Sub-cl.(b) provides for remedies for

protection of honour and reputation of the author. The bundle of rights and remedies provided by S.57 is in tune with the modern development in law relating to protection of intellectual property of the author and the international agreements and treaties in that regard. The learned Judge is not right in saying that because the modifications are permissible under the Contract of Assignment the plaintiff had failed to prove the breach of Sec.57. As stated earlier the correct way of construing the contract of assignment D.0031-4-83 is to read the provisions of the said contract as complimentary to S.57 and not inconsistent with it. Cl.(b) of the Contract states, "Shri Sir sir Mishra, the Director of the aforesaid film is writing the screenplay of our Production No. 1 and that you have agreed to allow him to make certain modifications in your novel for the film version in discussion with you to make it suitable for a successful film. Only "certain modifications" which are necessary for converting the novel into a film version are allowed. The second object of modifications is to make the film version suitable for a successful film. But the said modifications are to be done after discussion with the author. The contract further states that proper publicity will be given to the plaintiff as the author of the said story in all credits (commercial and other publicity). Subject to these important caveats, the assignee shall become the exclusive copyright holder of the said novel, to exploit the novel for any reproduction except by way of publication as a novel. Reading the contract with Section 57 it is obvious that modifications which are permissible are such modifications which do not convert the film into an entirely new version from the original novel. The said "certain modifications" should also not distort or mutilate the original novel....."

(9) On the basis of the aforesaid authority, the learned counsel for the plaintiff has argued that the defendants have no right to mutilate or distort the facts as based upon prison diaries and anything done contrary she has got the right by virtue of Sec-57 of the Indian Copyright Act and any addition, alteration or modification is illegal, uncalled for and unwarranted. In her support she has cited Indira Jasing Vs. Union of India and Others, which reads as under:-

"WHEN various interviews taken for a programme are edited, it is necessary to ensure that in the process of editing, the views expressed are correctly conveyed on the programme which is telecast. A portion of the interview may, at times, have to be deleted while editing the programme. But in the process of such deletion there should not be any gross distortion or misrepresentation of what had been said. Nor should important points raised be completely omitted."

(10) On the basis of above arguments she has stated that there is a prima facie case in favor of the plaintiff and balance of convenience is also" in favor of granting the injunction order. In her support she has cited United Commercial Bank Vs. Bank of India and Others, and Mallamma Vs. Nanjamma and Others, .

(11) On the other hand, Mr.Ashok Desai learned Senior Advocate for the defendants have argued that there is no right to privacy as far as a public figure is concerned. The main thrust of his argument is that the plaintiff in the plaint

herself has described herself as a legendary figure and, Therefore, the defendants have got the right to make film depicting life of a legendary living person and that right is not circumspect in relation to the writings of the plaintiff or book written by defendant no.4.

(12) MR.DESAI has further contended that even otherwise the objectionable scenes as has been described by the learned counsel for the plaintiff have also taken care of by the Censor Board and scene relating to the title, sexual and graphic display of rape by Babu Gujar, gang rape, conversation in police station and scene parading the plaintiff nude at Bahmai has already been censored by the Censor Board. In relation to the scenes depicting child rape of plaintiff after her marriage or making love with .Vikram Mallah at Kanpur and Behmai killing have been shown on the basis of public record available in innumerable number of press cuttings, press interviews etc. Mr.Desai has argued that the plaintiff on numerous occasions had given interviews to various newspapers about her life and voluntarily invited controversy and they had received publicity and all these are public records and defendant has the right to make a film on the basis of ther said public record. More so, Mr.Desai in view of recent pronouncement of the Supreme Court in the case of R.Rajgopal @ R.R.Gopal"s case (supra) has argued that plaintiff cannot prevent the defendant from writing her life story. Mr.Desai has on the basis of aforesaid judgment of the Supreme Court has contended that the plaintiff is not entitled for the grant of injunction the only remedy plaintiff has got will arise after the film has been exhibited and that may be for damages. Mr.Desai has further contended that the broad principles which have been enumerated in para 29 of the aforesaid judgment, inter alia, categorically prohibit the grant of the injunction in favor of the plaintiff.

(13) Another leg of the argument of Mr.Desai is that the plaint is not based on the contract entered into between the parties. In the alternative, he has argued that cause of action as averred in the plaint is not on breach of contract but on the basis of right of publicity, contempt of court, violation of Copyright Act and contravention of right to privacy. In view of the aforesaid cause of action, the learned counsel for the defendants has argued that no injunction can be granted, as prayed for, by the plaintiff. Mr.Desai has further contended that the plaintiff is also guilty of suppressing material fact as she has not mentioned the letter written by the lawyer dated 6.2.93 and an agreement entered into between defendants and relatives of the plaintiff dated 24.4.93 and with the plaintiff on 26.4.93.

(14) The main thrust of the arguments of Mr.Desai, learned counsel for the defendants, was that plaintiff by her own actions and according to her own averment in the plaint is in the realm of the public domain and once a person comes under public domain then he cannot claim privacy. As a matter of fact the plaintiff has invited controversy and various press reports, newspapers, articles have been written on the plaintiff. Mr.Desai has further contended that not only press and media have given vide publicity to her actions but at number of

occasions she has herself admitted her presence at Behmai. In this regard specifically referred extracts from "On Looker" March 1 to 15, 1983 in which she has stated in reply to a question

"ANSWER In the Behmai massacre, it was like this. See, our gang had only five men, the five who were shot dead in Gulauli, and 1. In Mehmai, it was a gang of 20 which massacred those bastards. There were three main leaders, I, Ram Autar and Raghunath. Ask the Thakurs, of the Chief Minister, or the Ig even....."

(15) Further the attention of the court was invited to the extracts from the same magazine that she herself admitted that she was present at Behmai and what the film has depicted was not shooting the Thakurs but simply shooting not to kill but at the legs. Much reliance has been placed by Mr. Desai on the German documentary Phooleri devi - Rebellion Einer Bandit in where she has admitted rape. Mr. Desai has argued that she has herself admitted in the said German documentary being raped by Babu Gujar and Mala Sen's book at pages 70 to 72. Attention of the court has also been invited to the plaintiff's own admission regarding her rape as a child from extracts from "Femina" dated 8th June, 1993 and from German documentary aforesaid. On the basis of the voluminous documents on the record, Mr.Desai has argued that in view of the admissions by the plaintiff on various instances which now plaintiff is complaining cannot be shown in the film, the plaintiff has no right to seek injunction from this Court. The plaintiff has, as a matter of fact, consented, acquiesced, agreed and averred for making the film in spite of any agreement as she herself described as a legend in the plaint. Mr.Desai has argued that the

(16) MR.DESAI has also contended that this Court has no jurisdiction in relation to issuing any injunction restraining the Channel-4, the distributors of the plaintiff's film, as Channel-4 is outside the jurisdiction of this Court and they have neither any office nor any representative in India and has appeared in this Court on account of deference shown to the Court. Another leg of the arguments of the learned counsel for the defendants has been that it is possible to have several version recorded in book but if a film has to be made it cannot depict several version but it has to be coherent because film is not like the book. Learned counsel has contended that the film is a work of art and in the realm of privacy the plaintiff cannot defeat the freedom of speech in public realm, more so, when the same has been consented to by virtue of the agreement entered into between the plaintiff and defendants.

(17) Learned counsel for the defendants has argued that as a matter of fact the agreements entered into by the plaintiff with "Anancy Films" dated 11.5.1988 and further entered with Channel-4 on 1.6.1989 do not abridge the right of the plaintiff to make the film on the plaintiff being in the realm of public domain but agreement enlarges and suppliant is in the nature of additional right given to the defendants to make the film.

(18) Learned counsel for the defendants on the basis of the aforesaid agreement stated that what was intended between the parties was that the defendants will be entitled to use the writings of the plaintiff and would make a documentary or film and it was for the defendants to use such writings or not to use the same and if it was to be used they had the option to modify, alter, add or cut from the writings and it was the desire of the defendants to make the film after carefully collecting the material and entering into research from various sources and the whole endeavor has been bona fide and without any malice or ill-will against the plaintiff.

(19) MR.DESAI has taken exceptions to plaintiff not filing the letter which was written by the lawyer of the plaintiff on 6.2.1993 wherein for the first time, after 1988 when defendant No.4 was authorised to write the book, plea was not taken that the book written by defendant No.4 was not authentic and if the film is made basing the said book by defendant No.4 it will generate casteism which will affect communal harmony in the country. Mr.Desai has further argued that the plaintiff has also withheld from this Court the agreement which was entered into by B.V.Videography, defendant No.6 with plaintiff wherein it was mentioned that she will not raise further claims in connection with this film and its production, delivery, exhibitions and broadcast at any time in future. This agreement bore the signatures of plaintiff, her brother, defendant No.4 and defendant No.6. This agreement specifically mentioned that all payments due to the plaintiff were received by her. Yet another demand of more than Rs. 1,50,000.00 was made by defendant No.6 to Man Singh, Shiv Narain, Rukmani, Mulla Devi and again specific mention was made that no further claims will be made financial or copyright by any of the parties in connection with this film either with its producer or any of its associates, agents or assignees.

(20) MR.DESAI has further contended that no injunction can be granted apart from the arguments which he has submitted above even on the ground that there is no malice in making the film. Learned counsel for the defendants has argued that it is not a case where reckless disregard to truth has been given by the defendants.

(21) MR.DESAI has further contended that the conduct of plaintiff in suppressing the agreements dated 26.4.93, 24.4.93 and letter sent by her lawyer dated 6.2.93 disentitle the plaintiff for equitable relief of injunction. Next arguments of the learned counsel is that this Court has no jurisdiction as far as exhibiting of the film outside India is concerned as foreign decrees until and unless they are actionable in the country where injunction sought to be implemented are not following the similar laws. According to him in United Kingdom there is no law regarding privacy and if any injunction is granted in India the same cannot be effectively implemented in United Kingdom. Moreover, he has argued that in view of 8,00,000 copies written by French author have been sold in France on the plaintiff any issuance of injunction would be an exercise in futility. In support of his arguments, Mr.Desai has cited Suresh Jindal Vs. Rizoli Corriere Della Sera

Prodzoini T.V.S.p.a. and others, . While advertizing to the arguments of the learned counsel for the plaintiff regarding the contempt, Mr.Desai has contended that plaintiff cannot take this plea in these proceedings as if any contempt is committed that will be in relation to the Court where the various proceedings are pending and in the present case the proceedings are pending in the Courts at Uttar Pradesh and the contempt of this nature falls u/s 2(c) of the Contempt of Court Act and, Therefore, it is the High Court at Allahabad that would be competent to initiate any contempt proceedings either suo motu or on the complaint of the Judge concerned who is dealing with these matters. Mr.Desai has cited in his support Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, .

(22) Repelling the contentions of the learned counsel for the plaintiff the counsel for defendants has argued the provisions of Section 57 of the Copyright Act will not be applicable to the facts and circumstances of this case. According to him this Section deals with author's special rights and in any case the film as has been made neither contravenes any provisions of the Copyright Act nor plaintiff can claim to have any right as an author on the script. If there is any right, same vests as an author with defendant No.4 and, Therefore, the plaintiff cannot seek any help from the provisions of Section 57 of the Copyright Act. Mr.Desai has contended that at best the plaintiff can maintain an action for damages and at best this Court can grant directions in relation to the title of the film which states film as "true story" but that also is not necessary in view of the restrictions imposed by the Censor certificate inter alias directing the defendants to delete the title "true story" and by substituting it that film is based on the book India's Bandit Queen"..

(23) Repelling the contention of Mr.Desai, Ms.Jaisingh at the outset has argued that the translation filed by the defendant of the German documentary is not authenticated as plaintiff gave her interview in Hindi which was translated into German and copies of the same supplied by the defendants are in English. She has also argued that in Raj Gopal's case (supra) the Supreme Court has held:-

" THE first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising - or non-advertising - purposes or for that matter, his life-story is written - whether laudatory or otherwise - and published .without his consent as explained hereinafter."

(24) She has laid stress that apart from the contract entered between the parties the defendants have no right to make film. The right of the defendants to make a film flows from the agreement and that too on the basis of the writings of the plaintiff or on the basis of said writings whatever has been written by defendant no.4. Apart from that there is no other right on which the defendants are entitled to make film on the private life of the plaintiff including rape scenes or her being paraded nude at Behmai. Ms.Jaisingh took great pains in explaining that the arguments of learned counsel for the defendant that the plaintiff is a public figure

is not well founded. She has contended that every public figure may be well known but every well known person cannot be a public figure. She has cited *Elmer Gertz V. Robert Welch, Inc.* 41 L Ed. 789 which defines "public figure" as follows:-

"INTIMATELY involved in the resolution of important public question or by reasons of their fame, shape, events in the areas of concern to society at large."

(25) On the basis of above definition, learned counsel for the plaintiff has argued that according to the arguments advanced by the learned counsel for the defendants plaintiff is a criminal responsible for dacoity and murders Therefore plaintiff cannot be termed a "public figure". Learned counsel for the plaintiff has also argued that plaintiff is neither a "public official" nor she is a "public figure" and in any event no person has the right to write about or make a film about the private life even of the public - official or public figure. Quoting from *R.Rajagopal @ R.R.Gopal's* case (supra) which is as follows:-

"IT is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in para (1) and (2) above...."

(26) The learned counsel for the plaintiff has also argued that press cuttings / interviews which have been reported in various newspapers, magazines, periodicals cannot be taken note of by this Court as the same are only hearsay and no affidavit of the various journalists to whom the interviews are alleged to have been given has been filed on record. She has also argued that defendant no.4 herself has stated in her book that the press has been unfair, inaccurate and wholly prejudiced in their dealings with the plaintiff. She has invited the attention of this Court to the excerpts from Mala Sen's book particularly page 150, "press re-ports about the "Behmai Massacre" vary, adding much fiction and fantasy to fact". Then at page xiv of the said book, "together we have tried to untangle fact from fiction. Still, I am aware that here, in India, the imagination runs wild and the story changes as it is told and retold".

(27) She has argued that defendant no.4 in her written statement at page 10 has herself stated that "Had the answering defendant exclusively decided upon the final scripts her emphasis on certain incidents would have been different from that of the Director." She has also stated that one ? of the columnist Ms.Tavleen Singh has written an article on The Daily Sunday which is a document filed at page 148 | -

"THATPhoolan has always denied that she was even in Behmai or that she killed any one. Phoolan's constant denials were what made the press lose interest in her almost as soon as she surrendered..... I actually met her the night before she surrendered.....".

(28) Learned counsel has also argued that even in the Book written by Mala Sen it is no where stated that plaintiff was raped by her husband or she was raped in

the police custody or regarding rape by Babu Gujar and there is no mention of either being paraded necked in the writings of the plaintiff and the film has deliberately and mala fide only for pecuniary gains chose to picture the vicarious accounts on account of American Journalist writing for Esquire magazine. The whole case of the plaintiff is that the film is neither based on the writings of the plaintiff nor on Mala Sen's book which is based on the writings of the plaintiff and that has been based on a script which has been provided by Channel-4 Television and in this connection the learned counsel for the plaintiff has argued that a conflicting statement has been made by the defendant about on what film is based on. The learned counsel for the plaintiff has also argued that what was agreed to be made by Channel 4 to the defendant was a documentary on Indian Banditry that too based on the writings of the plaintiff and plaintiff has never consented with the private life of the plaintiff or rape which not only bring ridicule to victim but has far-reaching consequences for a living person shown in the film. Learned counsel for the plaintiff has also argued that irreparable and incalculable harm to the plaintiff will be done in case injunction is not granted by this court. The harm cannot be compensated in terms of money alone. Ms.Jaisingh has argued that what is at issue in this suit is not the cinematic value of the film, but it is truth or falsity and the question whether it invades the plaintiff's rights. She has also argued that the arguments advanced by Mr.Desai that no injunction can be granted in relation to matters in the public domain is only relevant to a cause of action based on confidentiality and has cited Attorney General v. Guardian 1988 (7) All E.R. 545. She has further contended that it is wrong to suggest that in order to generate sympathy , for an oppressed women it is necessary to show her being raped, gang raped and paraded naked. This portrayal of her will add to her sense of shame and defendants in reckless disregard of the feeling of the plaintiff made a film which will injured the feelings, life, liberty and dignity of the plaintiff. She has also argued that inference be drawn against the defendant as defendant till date in spite of application moved by the plaintiff has not shown her the film and defendant no.3 has violated guidelines for making documentary drama films which are binding on them which lay down respect for right to privacy, scenes of human suffering and distress which has been violated by Channel-4. Therefore, the arguments of Mr.Desai that defendant no.3 cannot be enjoined as it will not constitute an offence in U.K. is of no force. She has argued that the court has got power and jurisdiction to grant injunction against the defendants who are before this Court and admittedly defendant no.3 is before the Court and injunction against it can be granted.

(29) In her support Ms.Jaisingh has cited John Walker & Sons Ltd. v. Henry Ost & Co. Ltd. 1970 Rpc 489, White Horse Distillers Ltd. Vs. Gregson Associates Ltd. 1984 Krpc 61 and Alfred Dunhill Ltd. Vs. Sun optics S.A. 1970 FSR 337.

(30) After hearing learned counsel for both the parties, at the outset, I would like to mention that this Court at this stage is not concerned with the certification granted by Board of Films Censor. The Court is also not concerned with the

impact of cinematographic value, merit or demerit of direction, photography, presentation, editing and narration of the subject. What this Court is concerned on the basis of action maintained by the plaintiff is whether plaintiff has a right to get an injunction on the basis of agreement entered into between the plaintiff and the defendants on various dates and plaintiff could be shown in a manner as has been done by the defendants. The situation had been simpler but for the argument of Mr.Desai that the plaintiff being a public figure defendants had the right to make the film about the plaintiff without any reservation even in the absence of any agreement. To determine this first I have to decide as to whether prima facie the plaintiff is a public figure. If the answer is in the affirmative then the question will have to be decided as to whether the defendants or any one has got the absolute right to depict in any manner the private life of such public figure. The term "public figure" as defined in Black's Law Dictionary is as follows:-

" TERM "public figure," for purposes of determining standard to be applied in defamation action, includes artists, athletes, business people, dilettantes, and anyone who is famous or infamous because of who he is or what he has done. *Rosanova v. Playboy Enterprises, Inc.*, D.C.Ga.,411 F.Supp. 440, 444. Public figures, for libel purposes, are those who have assumed roles of special prominence in society; commonly, those classed as public figures have thrust themselves to forefront of particular public controversies in order to influence resolution of issues involved, *Widener v. Pacific Gas & Elec. Co.*, 75 C.A. 415, 142 Crptr 304. For right of privacy action purposes, includes anyone who has arrived at position where public attention is focussed upon him as a person. *Dietemann v. Time, Inc.*,D.C.Cal., 284 F.Supp. 925."

(31) For the purpose of standard to be applied in defamation action from the dictionary meaning "public figure" is one who is famous or infamous because of who she is or what she has done as public figure. Public figures, for purposes of libel are those who have assumed roles of special prominence in society, for right to privacy action purposes, one who has arrived at a decision where public attention is focussed upon him or her as a person. In the present case, present action is neither for defamation nor for libel. It is more based on right to privacy and for that purpose the argument of the learned counsel for the plaintiff that she is not a public figure is not what has been contemplated by the Black's Law Dictionary.

(32) After holding that, may be, for her famous or infamous deed the plaintiff had thrust herself in the arena of publicity, she cannot escape publicity, criticism and exposure by media, audio and video, may be, of " her liking or disliking. But the question before me is whether such person like the plaintiff has no right to defend when someone enlarges the terrible facts, enters the realm of her private life, depicts in graphic. details rape, sexual intercourse, exhibits nudity, portrays the living person which brings shame, humiliation and memories of events which haunts and will go on haunting the plaintiff, more so the person is still living.

Whether the plaintiff has no right and her life can become an excuse for film makers and audience to participate in an exercise of legitimate violence with putting all inhibitions aside. The question is whether the defendants have a right to show a woman being raped and gang raped, if the concerned woman is alive and does not wish this to be made public. Moreover, when the author of the book defendant no.4 itself has repeatedly written that the plaintiff would not even talk about being raped even in front of her own family and plaintiff has not mentioned the word "rape" in the writings that she smuggled out of prison to defendant no.4. Individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures and that is the content and meaning of privacy and right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. The United States Supreme Court in *Griswold v. Connecticut* (1965) 385 U.S. 479 while dealing with the right to privacy held:-

" WE deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our schools system....."

(33) In ancient India concept of "privacy" was found in Mahabharata:

"NAnagnibhikshte nari na vidvanpurushanapi, maithunam stanta guptmaharn cha samachmit. (a naked woman ought not to be seen and the learned ones ought to avoid seeing a naked man as well. Sex and food are to be enjoyed in a lonely place alone).

(34) As a matter of fact, Edward Shils maintains that privacy is a zero-relationship between two persons or two groups or between a group and a person. It is a "zero-relationship" in the sense that it is constituted by the absence of interaction or communication or perception within contexts in which such interaction, communication or perception is practicable such as a family, a working group and ultimately a whole society. Privacy may be the privacy of a single individual, it may be the privacy of two individuals, or it may be the privacy of three or numerous individuals. But it is always the privacy of those persons, single or plural, vis-a-vis other persons. (Edward Shils, "Privacy: Its Constitution and Vicissitudes" 31 *Law and Contemporary-Problems* (1966) 282). It is implicit in the right to privacy as to what extent her thoughts, sentiments, emotions shall be communicated to others in India. Explicit display, graphic detail of being paraded nude, rape and gang rape does not only hurt the feelings, mutilate the soul, denigrate the person but reduce the victim to a situation of emotional abandonment which is very essence of personal freedom and dignity.

(35) In a land mark judgment in *R.Rajagopal*'s case (supra) the Supreme Court laid down the broad parameters that :-

"OVER the last few decades, press and electronic media have emerged as major

factors in our nation's life. They are still expanding - and in the process becoming more inquisitive. Our system of government demands constant vigilance over exercise of governmental power by the press and the media among others and, Therefore, the Government carries a heavy burden of showing justification for the imposition of such a restraint and, Therefore, the Supreme Court held in Auto Shankar's case that no such prior restraint or prohibition of publication can -be imposed by the respondents upon the proposed publication of the alleged autobiography of "Auto Shankar" by the plaintiff therein."

In para 29 of the judgment the Supreme Court held that :-

"THE right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy."

The Explanation concerning the aforesaid aspect becomes unobjectionable if such publication is based upon public record including court records.

(36) In the arena of right to privacy Auto Shankar judgment makes it clear that right to privacy is implicit in the right to life and property guaranteed to the citizens of this country by Article 21 of the Constitution, consent and public record being exception in contravening the right to privacy.

(37) Now, I deal with the question of public record. What has been argued before me by the learned counsel for the defendants that in view of numerous press reports, interviews in newspapers as well as in video magazines at home and abroad the subject matter of the film right to privacy is not available to the plaintiff. The argument of the learned counsel for the defendants is devoid of any force. Voluminous newspapers, periodicals, magazines which have been filed in the Court it can" not be understood or implied that at any stage the plaintiff had admitted in unequivocal terms that she was raped or gang raped or had sexual intercourse or was paraded nude at Behmai, which according to the learned counsel for the defendants are public records. Time and again it has been held that such records are not public records as contemplated by Supreme Court in Auto Shankar's case.

(38) Adverting to the arguments of the learned counsel for the defendants that in any case plaintiff has acquiesced and consented to her being portrayed as has been done in the film she cannot now claim any right to privacy in this regard. What she had agreed to in the first agreement dated 11.5.88 was that she granted sole and exclusive right to use and reproduce the writings or any part or

part thereof in connection with and as a part of cinematograph films (including the Film) with further right to the defendant to cut or alter and adapt the writings and use them alone or with other material and/or accompanied by narration and/or editorial comment. The harmonious construction of this agreement dated 11.5.88 which was entered into between the plaintiff and Anancy Films Limited which was later on assigned to Channel-4 defendant no.3 was for the purpose of film relating to the Indian Banditry. Materials written by the plaintiff which were written by others at the dictation of the plaintiff and on the basis of which defendant no.4 had written the book the defendants had the sole right to use and reproduce the writings with certain additions and alterations. Certainly this agreement does not give a license to the defendants to make a film in total disregard to her right to privacy, intimate relations with Vikram Mallah, or being raped, gang raped, paraded nude or her sexual abuse as a child. Mr.Desai has contended that the plaintiff has deliberately not mentioned notice and agreement dated 26.4.93. By agreement dated 26.4.93 plaintiff had withdrawn the legal notice dated 6.2.93. She has stated in unequivocal term in the agreement dated 26.4.93 that she is withdrawing her notice dated 6.2.93 and she will have no claim in connection with the film and its production, delivery, exhibition and broadcast. The plaintiff has been aggrieved and stated time and again that neither sketch nor the story nor the actual film as made and produced was ever shown to her. From this agreement it cannot be inferred that the plaintiff had the knowledge as to what is shown in the film. Prima facie, I am of the opinion that she believed in good faith after receiving money that whatever has been shown or whatever the film was, same was based upon her writings which defendants derived from the book written by defendant No.4. The film starts with the title "This is a true story". Once the film starts with the title "This is a true story" it is strange that in spite of repeated demands made by the plaintiff defendants chose not to show the film to the plaintiff on whose life they have made the film alleging it to be a true story. In modern times media, particularly films play an important role in influencing the course of thinking and the apprehension of plaintiff, that depiction of the plaintiff in a way as she has been portrayed in the film will bring her to ridicule, humiliation, more so, when she had married and wants to start a life of her own apart from other far-reaching effects which plaintiff would face which have been mentioned earlier.

(39) I am of the prima facie opinion that from the documents on record it cannot be said that plaintiff has consented and given license to the defendants to make the film in any manner they like including exhibiting sexual abuse which has been shown in graphic detail by the defendants in the film. The Court is also not concerned at this stage as to whether it generates sympathy for the victim or not.

(40) Whether agreement dated 26.4.93 can be treated as a consent from the plaintiff to authorise the defendants to produce and exhibit a film containing objectionable material is a matter of evidence.

(41) Learned counsel for the defendants has argued that if this Court comes to a

conclusion that injunction has to be granted the same can only be granted in India only. The producer, director and distributor of the film are before this Court, the subject-matter and the shooting of the film have all taken place in India. The actors and actresses all are Indian. Channel - 4 T.V. defendant no.3 is also bound by the orders passed by this Court as for T.V. operator in U.K. there is a Code of Conduct which prohibits screening of material which adversely affect privacy. " If the defendants had displayed the film in some of the countries it is no ground for refusing injunction to restrain the defendants from exhibiting the film further abroad till the decision of the suit.

(42) In view of the observations above, I need not go into other questions raised by learned counsel for the parties and I hold that the defendants , have no right to exhibit the film as produced as has been filed in this Court violating the privacy of plaintiff's body and person. Balance of convenience is also in favor of restraining the defendants from exhibiting the film any further, if defendants are allowed to exhibit the film further it would cause further injury to the plaintiff. No amount of money can compensate the indignities, torture, feeling of guilt and shame which has been ascribed to the plaintiff in the film. Therefore, I restrain the defendants from exhibiting the film in its censored or uncensored version till the final decision of the suit. I.A. stands disposed of. Suit and other I.As. be listed for 14th February, 1995.