

(2012) 10 MAD CK 0062

In the Madras High Court

Case No : Original Application No. 494 of 2012 in C.S. No. 409 of 2012

Sri Nithyananda Swami, formerly known as Rajasekar

APPELLANT

Vs

S. Arathi Rao and Others

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Citation : (2012) 7 MLJ 796

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Alagirisamy, for G. Bala and Daisy, for the Appellant; R. Sankaranarayan and K. Murugesan, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—This application is filed by the applicant/plaintiff seeking for an interim injunction restraining the respondents in any manner

making statements, conducting any panel discussions, giving interview, exhibiting, broadcasting, telecasting, allegations, reports, clippings, visuals,

etc., either by direct or indirect reference to the applicant and his devotees touching upon the guilt or otherwise of the applicant in C.C. No. 204 of

2010 and Crime No. 782 of 2011 on the file of the Chief Judicial Magistrate, Ram Nagara District, Karnataka. The suit itself was filed by the

applicant for a similar relief of permanent in nature. When the matter came up before this Court, this Court ordered notice to the respondents. On

notice from this Court, the first respondent has filed a counter affidavit, dated 5.8.2012. The third respondent has also filed a counter affidavit,

dated 5.8.2012.

2. Heard the arguments of Mr. K. Alagirisamy, learned Senior Counsel leading G.

Bala and Daisy, learned counsel appearing for the applicant/plaintiff and Mr. R. Sankara Narayanan, learned counsel appearing for respondents 1 and 2 and Mr. K. Murugesan, learned counsel appearing for Sumathi and Kalidas, learned counsel appearing for the third respondent.

3. The case of the applicant was that he was the founder of the religious institution functioning in the name of Nithyananda Dhyanaapeetam which

has its headquarters at Tiruvannamalai and has got branches including one at Bidadi at Mysore Road, Karnataka State. The applicant's

organization gained great repute and had achieved reverence around the world. The main aim of the applicant is to revive the Vedic tradition and

Hindu culture, worship. They have meditation centres in 151 countries and branch ashrams in over 40 countries. A lot of healing programs were

organized wherein thousands of people have experienced healing of diseases ranging from depression to cancer. The ashram also organized several

orientation programs and several other social service activities including medical and literacy camps, offering free food and spiritual services across

the country. Several lakhs of people have started following the activities of the applicant and his trust. The main object is to heal the human life and

also popularizing meditation. Approximately, 20 lakhs people have participated in the programs conducted by the applicant and his trust. About

one lakh people have participated in the programs conducted by the applicant.

4. The applicants stated that during March, 2010, certain allegations were created and published by vested interests in certain print and visual

media with malicious intentions and with an intention of gaining popularity and personal gain. The first respondent had admitted before the media

that she had planted a secret camera inside the bedroom of the applicant. She had also alleged to have recorded some video footage and the same

was morphed with some high standard technicians impersonating the applicant along with a cine celebrity. Thereafter, the respondents along with

some other people had blackmailed the applicant and demanded huge sum of money for not releasing the morphed video. Since the applicant did

not fulfill their demand, the morphed video was made public by the third respondent. The Manager of the applicant's trust had initiated a criminal

case against the first and third respondents and the same was registered in

Crime No. 782 of 2011 under various provisions of IPC. The investigation has been handed over to the CBCID, Chennai. The applicant stated that after initial publication, a criminal case came to be registered against the applicant in Karnataka. The police also after completion of the investigation had filed a charge sheet before the Chief Judicial Magistrate, Ramnagara District in C.C. No. 204 of 2010. In that case, the applicant had also been charged under various provisions of the IPC.

The first and third respondents are prosecution witnesses in the criminal case registered against the applicant. The second respondent is the father of the first respondent. The first respondent is absconding and evading arrest by the CBCID, Chennai. The first respondent with malicious intention had started giving false and defamatory interviews in print and visual media touching upon the allegations in the charge sheet so as to cause prejudice. The statements made were per se defamatory and no part of the statements were true. The intention of the respondents in making statements was to malign the applicant and his Mutt. The respondents out of malice are making statements and the same is being published, telecasted by print and visual media. The respondents are the authors of the malicious, defamatory and prejudicial statement. The first respondent had already given an interview in Swarna Kannada news channel on 2nd and 3.6.2012. The second respondent being the father of the first respondent had also given interview on 9.6.2012 in Swarna Kannda news channel.

5. The applicants stated that the first and second respondents are giving interview to various television and print media making false, frivolous and malicious statements against the applicant. They are not only false and are part of the charge sheet pending trial before the competent judicial Court at Karnataka. The interviews and other statements is a calculated attempt to cause loss and create an atmosphere of hatred against the applicant in the minds of the general public. Due to the malicious act on the part of the respondents, during the first week of June, 2012, law and order problem was intentionally created in the Ashram of the applicant at Bidadi so as to bring bad reputation to the applicant. He had reliable information that the respondents are taking steps to telecast and print the same allegations in the form of interviews in the State of Tamil Nadu. If they are not

restrained, the applicant will be put to irreparable loss, mental agony and prejudice. The applicant's prayer for quashing the criminal case is also

pending before the High Court of Karnataka. If the respondents are allowed to proceed to make statements, it may hamper free administration of

justice. The continuation of the publication of statements by the respondents in the magazines, web pages, television is highly defamatory,

fabricated and contrary to the truth. The action of the respondents is affecting the reputation of the applicant and lakhs and lakhs of his devotees.

Propagating the defamatory material is motivated by malice and they carry stories that cause embarrassment to the entire trust and its devotees.

The first and third respondents were also cited as accused Nos. 3 and 2 respectively in Crime No. 782 of 2011. The third respondent was

arrested and lodged in prison for more than 100 days and has now been granted bail. The first respondent is absconding. Hence the present

application is filed for an interim order.

6. In the counter affidavit filed by the first respondent, it was stated that if any case is to be filed in relation to C.C. No. 204 of 2010, the same has

to be filed only in Karnataka and not in Chennai. It is the applicant who has been posting defamatory articles touching C.C. No. 204 of 2010 and

Crime No. 782 of 2011 in his website, you tube and other social network websites, like facebook, twitter, Blogs, etc., besides the print media. The

applicant had posted 107 questions for the first respondent to answer with defamatory allegation on 11.7.2012 that too after filing the suit before

this Court on 27.6.2012. The first respondent is a graduate in Engineering from BITS Pilani, India. She had migrated to USA to do her post

graduate degree. She did her Masters degree in Mechanical Engineering and got a good job in USA. She also married another qualified person of

her choice and had established their marital home in Michigan. She had good and eventful academics life and got settled in life in 2004. But the

material achievements and the resulting pleasures did not give her satisfaction. Her mind was always in search of eternal truth. She was

continuously reading scriptures and various books on philosophy, which could only lead her in search of eternal truth. In family life also, she felt and

experienced a void. In 2004, when she visited India, she went to Bangalore. She saw a telecast in which the applicant had rendered a lecture on

meditation. Thereafter, she decided to visit his Ashram in Bidadi. The applicant had enquired about her background and suggested that she should undergo a short course in meditation, which she also underwent. The applicant had appreciated her interest in spiritual awakening and brought her in his inner circle. The applicant told her that she was a gifted person and that she had learnt the meditation process and she could become an Acharya. She was asked to assist his personal secretary as a personal care taker.

7. The first respondent had stated that the applicant could articulate on various subjects and he called himself as Paramahansa. The applicant also claimed to be an incarnation of Lord Krishna and Lord Shiva. The applicant had posed a question as to how he an individual not having been put in the course of any training in any ashram under any saint could articulate on every issue concerning Hindu Religion. He chose to answer the question by stating that it was because he was an incarnation of Lord Krishna and Lord Shiva. This was Cosmic knowledge not communicated even by word of mouth, but either a continuation of earlier knowledge or to use modern technological term downloading. The first respondent was about 30 years old at that time and with a great thirst for spiritual knowledge and awakening, she believe that he was an incarnation. The applicant impressed her with his knowledge in subjects and philosophy and presented himself as incarnation of God and that he enslaved her mind. The applicant was able to position himself at a place to dominate the Will of his disciples and that she was no exception. Her proximity with the applicant ultimately resulted in his enslaving her body and her mind. She was not able to resist his advances and every resistance met with a philosophical retort by stating that she could not but be a part of Mathurabhava, which is supposed to be the highest relationship between an individual and the divine. The applicant further exerted her and told her that the union with him was the union like Radha had towards Lord Krishna, Meera had towards Lord Krishna and Andal had towards Sri Ranganatha. She could not decide anything on her own and became a mere tool in his hands and was never in a position to either escape or for that matter even realize that she was being abused in the name of relationship between Guru and Sishya. She was always under the spell of the applicant and forfeited her individual thinking. There were many other

ashramities who were all qualified like her or even more and all of them owed their allegiances and faith towards the applicant. Many of the

ashramities had given up their great career and had subjected themselves to the directions of the applicant.

8. The third respondent is one such person who had given up his business and pursued the real life of a Brahmachari and became an ardent

devotee of the applicant. The third respondent was perhaps the first of the few individuals who realized the ultimate motives of the applicant and

that the applicant, a self proclaimed god man, did not possess even the very ordinary virtues of an ordinary men. During July, 2009, one Mr. Vinay

Bharadwaj also contacted the first respondent and sought her opinion on the personal life of the applicant. He even had suggested that the

applicant was a homosexual. The said Vinay Bharadwaj had enquired about her experience. The dominance of the applicant over her was so high

that she narrated even a bit of her discussion to the applicant and his secretary Ma Gopika. She sent a mail as per the dictates of the applicant to

the applicant's secretary narrating the conversation between her and Mr. Vinay. The applicant had insisted that she must reiterate her faith in the

applicant in absolute and certain terms. She also sent the mail on the dotted lines. Close on the heels of the above disclosure, a call came from the

third respondent and he enquired as to whether she has any doubts in her mind regarding the conduct or motive of the applicant. She was shocked

by the revelation of the third respondent. It was only when the third respondent asked her as to whether she was having a relationship and whether

she was also a victim of applicant's sexual abuse, she could not answer and fell into silence. The third respondent had persisted and she finally

cried and said "yes", The third respondent told her that the applicant was habituated to hand out such enlightenment to other people also. She has

to seek an answer whether the alleged spiritual enlightenment was a solitary act or the act of a man full of lust.

9. The video disclosure which she saw on 2.3.2010 made it known that the applicant was an ordinary man with all weaknesses and had used his

knowledge in religion and religious texts and his charm only to lure people to part with possession of their properties and in selected cases with the

person as well. She understood that once a person joins him completely, such a person relinquishes all his wealth and passes it on to the applicant

in various forms and becomes totally dependent upon the applicant for their economic sustenance. But, the greater impact was that in very many cases, the person who joined the applicant either as a brahmachari or as ashramites or vanaprastam or organizers or volunteers lost all their family moorings and got themselves isolated from their own kith and kin.

10. The case registered in C.C. No. 204 of 2010 emanated from the following facts. She gave a statement before the Karnataka police about the

activities of the applicant. She was given a pseudo name to protect herself. She never gave any interview at the time of giving statement to the

police in Karnataka and did not give any interview thereafter until June, 2012. Nobody knew her identity until the applicant started giving interview

to various channels including press media and in the website maintained by the applicant and by persons associated to the applicant. They were

posted in youtube, facebook, twitter and several other blogs. The first respondent also craved leave to refer to and rely upon the print out and CD's

at the time of hearing. The applicant had started the media war and conducted the media trial against the first respondent and the other

respondents. The applicant had abused her for nearly two years and assassinated her character at his will. The applicant has to come with clean

hands before seeking equitable remedy of injunction. During July, 2011, the applicant through his spokesperson had preferred a complaint with the

Commissioner of Police, Chennai alleging that the third respondent, the first respondent and a number of other persons had threatened the

applicant with publication or exhibition of a video showing the applicant in a compromising position with a cinema artist unless the applicant parted

with huge sums of money. A case was registered in C.C. No. 782 of 2011. The investigation is still on and the first respondent was released on

interim anticipatory bail. She is being interrogated by the investigating officer. She was surrounded by the entire press when she went to the learned

Magistrate's Court to execute the bond. She had exercised utmost restraint and refused to give any interview.

11. The subject matter of C.C. No. 204 of 2010 and Crime No. 782 of 2011 has been repeatedly dissected, analysed according to the whims

and fancies of various press owners and T.V. Channels supporting or opposing her. Both cases have always attracted the print media as well as

electronic media. Nakeeran Kamraj and Gopal were accused in Crime No. 782 of 2011 and they left no stones unturned by revealing every

aspect of the investigation to the press. Similarly, the former Chief Executive Officer of Sun Network Mr. Hansraj Saxena was also an accused in

Crime No. 782 of 2011 and he had also given enough publicity to the issue. While the applicant had sought for an injunction both temporary and

permanent against respondents, he and his associates and devotees have given several interviews, handouts, social media campaign, etc. The first

respondent has tabulated various interviews given by the applicant started from 5.10.2011 till July, 2012. It is unnecessary to reproduce the details

set out in the counter affidavit in paragraph 18, but suffice to state that very many news items are attributable to the applicant. It was stated that

during March, 2010, a popular TV channel in Chennai had exhibited a film depicting the applicant in compromising position with a cine artist. This

was followed by a number of news items in various journals through the length and breadth of the country.

12. It was stated that the charge sheet in Karnataka was filed in 2010. It was also stated that the first respondent and the third respondent are

witnesses in C.C. No. 204 of 2010. Likewise, there are also several other witnesses to the said case. The applicant therefore caused a legal

proceedings against Vinay Bharadwaj in USA and also caused criminal and civil cases against Kishan Reddy in Hyderabad and Bangalore. He had

also filed cases against Veena and Jayaram in Karnataka. One Prasanna who is an organizer from Kancheepuram, was an accused in Crime No.

782 of 2011. The applicant filed a complaint against Dr. Ganesh in Rajapalayam and against Ms. Amudha Bharathi from Malaysia in Chennai.

Vinay Bharadwaj and Amudha Bharathi were cited as witnesses in the 2nd charge sheet in C.C. No. 204 of 2010. The applicant had preferred a

complaint against one Gunasekaran, Salem as he was also a witness in C.C. No. 204 of 2010. This will show that the applicant had indulged in

intimidating all witnesses to his crime so as to bring them into submission. The applicant is trying to prevent them from talking in their defence. The

allegation that she was absconding and evading arrest was denied. She merely responded to the volley of allegations thrown at her by the

applicant. It was an act of defence and not in defiance. She had answered a specific question as to why she should talk about the issue in June,

2012. She had also stated that the charge sheet was filed in 2010 and the trial was yet to begin despite delay of more than two years. She had

reasons to believe that she will be silenced even before she could be spoken in the trial. She had also stated that whatever stated in the complaint

was true and correct and should anything happen to her, the general public should draw a lesson and protect themselves. It was an appeal to those

who are unknown and who may be victims living somewhere and to prevent others from becoming victims. Her interview was not defamatory.

13. The applicant himself had given an interview to Samaya T.V. On 28.6.2012. The contents of the charge sheet have been widely published in a

large number of dailies in Karnataka and it is in public domain. The applicant in his website on 11.7.2012 had posed 107 questions targeting her

and also tarnishing her image. It was posted in his website and all other social networks. Her interview and proposed interviews are to deal with

those questioned posed. The applicant had resorted to a press trial after filing the suit. The plaintiff after filing the suit on 18.7.2012 had posted in

his website the news titled Fake Rape Victims are a danger to society. This statement is apparently an extract of an order of the Delhi Court. The

applicant had indulged in mud-slinging after gagging the mouth of the victim. The applicant has also been resorting to media at Will during the past

two years and giving his voice on the same subject matter including the case on hand. Hence, the applicant is not entitled for any relief.

14. The third respondent in his counter affidavit had stated that the third respondent was doing business in pesticides and had a lucrative business.

He had purchased an apartment in Saligramam and also owned a Car. He was in a quest to know the ultimate truth. He went to Ramakrishna mutt

and used to constantly visit Ramakrishna Mutt. He wanted to join Ramakrishna Mutt as a brahmachari, but he could not do so on account of

practical difficulties. He got introduced to the applicant some time in 2004 and used to visit his ashram. He decided to join the applicant's ashram

and become a brahmachari in 2006. The applicant advised him that renunciation of everything is sine qua non of a Sanyasi and that celibacy is an

essential prerequisites of a Sanyasi. The third respondent informed the applicant that he never married and never intended to marry. The applicant

wanted to transfer the third respondent's flat to his ashram. The third respondent informed him that he owed money to the ban and that he had

mortgaged that property. He sold the property as the applicant had insisted that he must discharge the debts and not own any property. Even the car owned by him was handed over to the applicant's ashram in 2006. Though he was known as Lenin, the applicant had changed his name as Sri Nithya Dharmananda. He followed the legal formalities in changing his name. He also switched over to saffron dress and followed the rigors of Brahmachari. He reposed absolute faith and confidence in the applicant. He learnt meditation and yoga and a little Sanskrit. He was not taught Upanishads, Vedas or any other basic scriptures. He was one of the close aids of the applicant and part of his inner circle. He used to drive his case and was a confidante. He was incharge of publications. Around November, 2009, he had reasons to believe that the applicant had created a myth around him and that he was not a person he claimed to be. He had a shocking revelation that the applicant was interested in women. He was informed by Vinay Bharadwaj all these facts. He made discreet enquiries and found that what was told was true.

15. He later confronted with the first respondent and queried whether she was also a victim of the applicant. The first respondent was silent at the initial response, but ultimately, she informed him that she had never realized that she had been abused. The first respondent further informed him that the applicant claimed that the applicant and first respondent were like Radha and Lord Krishna. Subsequently, the activities of the applicant were videographed and this found its way to one of the TV channels. The third respondent filed a complaint with the Commissioner of Chennai expressing his apprehensions to the safety of his person and property. He had referred to the misdeeds of the applicant in the said complaint. The complaint was forwarded to the Karnataka police and the investigation was commenced. During the course of the investigation, the first respondent informed the investigating officer the manner in which the first respondent was dominated by the applicant as well as the sexual interaction with her. A case of rape was registered and it culminated in a charge sheet. Immediately, the applicant had resorted to threatening tactics and filed complaints against the witnesses in the case before the Karnataka Courts. The applicant gave interviews to the press from 2010 onwards and that the third respondent had given interviews very recently. Some of the interviews were telecasted and some have not been

telecasted. The applicant has been sending out disparaging remarks against the respondents. It was the applicant who is defaming all respondents and has imputed motive to the third respondent and that he had also questioned his celibacy. The applicant had resorted to media either by himself or through his cohorts. Neither the first respondent nor the third respondent is possessed with sufficient funds to match the hate campaign unleashed by the applicant. The subject matter of two cases have been discussed in detail by the press and electronic media in Karnataka and in Tamil Nadu and the same has not affected the applicant at any time. There was no legal injury. There was apprehension of legal injury to the applicant is exaggerated. A person like the applicant who is a celebrity cannot curtail the fundamental right to seek publishing of the views of the third respondent in response to the allegations made by the applicant.

16. It is under these circumstances, it has to be seen whether the applicant is entitled for the relief claimed in the application. The applicant has not filed any rejoinder or replication to the counter affidavits filed more particularly to the details given in paragraph 18 of the counter filed by the first respondent. He has also not denied the facts that he had also posted very many matters in his website and the social network subsequent to the filing of the suit. It must be noted that a person who comes to Court seeking for equitable relief like an injunction must also come with clean hands. He cannot make the Court as a tool to prevent his adversaries made silent while he can be active by posting questions in the social media. The respondents have stated that they have not given any particular interview and they have merely responded to the questions before the press. While the respondent had posted 107 questions to the first respondent, there is nothing wrong in the first respondent in replying to such questions.

17. First of all, the applicant cannot claim any right to privacy because he is in a public domain and his right of privacy is very limited. The question whether freedom of speech and expression given to the electronic and print media and reporting matters which are sub judice and whether the Court can frame any guideline in this regard came to be considered by a constitutional bench of the Supreme Court vide judgment in Sahara India Real Estate Corporation Ltd. and Others Vs. Securities and Exchange Board of India and Another, The Supreme Court in that judgment while

declining to frame any guideline in this regard, but regarding publication of such matters pending trial ordered by stating that the Courts can grant

postponement of publication of such reports. In the present case, the applicant is not seeking for any gag order against any press and it is only

against the respondents. In such situation, the Supreme Court in that judgment in paragraphs 42 and 43 had observed as follows:

42.....Lastly, postponement orders must be integrally connected to the outcome of the proceedings including guilt or innocence of the accused,

which would depend on the facts of each case. For aforesaid reasons, we hold that subject to above parameters, postponement orders fall under

Article 19(2) and they satisfy the test of reasonableness.

(v) Right to approach the High Court/Supreme Court

43. In the light of the law enunciated hereinabove, anyone, be he an accused or an aggrieved person, who genuinely apprehends on the basis of the

content of the publication and its effect, an infringement of his/her rights under Article 21 to a fair trial and all that it comprehends, would be entitled

to approach an appropriate writ Court and seek an order of postponement of the offending publication/broadcast or postponement of reporting of

certain phases of the trial (including identity of the victim or the witness or the complainant), and that the Court may grant such preventive relief, on

a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned principles of necessity and proportionality and

keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of

prejudice to the proper administration of justice or to the fairness of trial. Such neutralizing device (balancing test) would not be an unreasonable

restriction and on the contrary would fall within the proper constitutional framework.

(emphasis supplied)

18. Though the above quoted passages were made with reference to an accused seeking for a restraint order against media, the principles laid

down therein may also apply to the case on hand. At the same time, the Supreme Court has cautioned that such order will have to be passed on

case to case basis and also based upon prejudice that may be caused to the applicant. In the present case, the following facts would disentitle the

Court to grant any injunction against the respondents.

19. Crime No. 782 of 2011 was filed by the applicant and therefore, it is the respondents who can get an order against the applicant. Further, the

applicant even after filing the suit has used the media, both print and visual, as well as social networking sites and even had posted several

questions for the first respondent to answer and has been liberally giving interviews. Therefore, he cannot seek any relief before this Court having

used his power for ventilating his own views with the case on hand. A person who comes to Court seeking the relief of equity must also behave

himself and not violating the very principle for which the relief was sought for from this Court.

20. Lastly, the charge sheet has been filed in the year 2010 and since then, as rightly contended by the respondents, the issue has been discussed

threadbare in various media to the length and breadth of the country. There is nothing further to be stated on the issue. The respondents had only

stated that they have only responded to the queries made to defend themselves when such questions are asked and not with a view to defame the

applicant. In view of the facts which are set out above and the propositions of law made by the Supreme Court, this Court is not inclined to grant

any injunction in favour of the applicant. There is no prima facie case made out and also the balance of convenience is not in favour of granting any

interim order. Hence, the original application will stand dismissed. However, the parties are allowed to bear their own costs.